

PROJECT LABOR AGREEMENT
FOR
THE MIDWAY II SOLAR PROJECT

IMPERIAL COUNTY, CALIFORNIA

1. INITIAL PROVISIONS

1.1 This Project Labor Agreement ("Agreement") is entered into by Cupertino Electric, Inc. ("Primary Employer"), and IBEW Local 569 (the "Union").

1.2 The Midway II Solar Project (the "Project") is an approximately 155 MW photovoltaic solar power plant located in Imperial County, California. The Project is owned by 97WI 8me LLC ("Owner"). The Owner and the Owner's parents, affiliates, or subsidiaries, are not a party to this Agreement and are not bound by any article or provision of this Agreement. It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project, and may be modified by the Owner (including, but not limited to, modifications to reduce overall costs), and that this Agreement applies to the Project as it is finally approved and modified by such entities, agencies and/or Owner.

1.3 It is the intent of the Parties to establish a Project-specific partnership that will provide a skilled workforce represented by the Union and will allow the Employer (as defined in Section 1.6) to perform the Covered Work (as defined in Article 2) for the Project, including determining the number of employees necessary, work schedules, and working conditions (among other things) to allow the Project to be completed in a high quality manner, on schedule, and in a cost competitive manner. As it is essential for the Owner and/or Employer to meet certain dates for commercial production of power from the Project, the Union agrees that time is of essence as it applies to the performance of this Project.

1.4 A large labor pool represented by the Union will be required to perform the work involved in the Project. Employer (as defined in Section 1.6) wishes and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Union on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions in

compliance with applicable law. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the Parties and the orderly performance of the work, the Parties to this Agreement agree to establish adequate and fair wage levels and working conditions in compliance with applicable law.

1.5 Primary Employer is a contractor primarily engaged in the construction industry. Primary Employer directly performs construction work with its own employees.

1.6 As provided below, all construction managers, contractors, subcontractors, or other persons or entities assigning, awarding, or subcontracting Covered Work (as defined in Article 2) will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers"). This Agreement shall not bind or apply to any parents, affiliates, subsidiaries of any Employer. Each separate Employer shall be liable for its own breach of this Agreement.

1.7 The Union is a labor organization whose members are construction industry employees who generally work in close proximity to one another at construction job sites and whose jobs are closely related and coordinated. The Union is a party to a multi-employer collective bargaining agreement ("Master Agreement") that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement in effect as to the Union on the Effective Date of this Agreement subject to Section 6.9. Where the term national agreement is used, it means any existing national agreement between an Employer and IBEW in effect as to the Union on the Effective Date of this Agreement ("National Agreement").

1.8 In the interest of the future of the construction industry in the local area, of which the Union is a vital part, and to maintain the most efficient and competitive posture possible, the Union pledges to work and cooperate with the management of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In addition, the Union shall not

afford preferential status to other projects in the jurisdiction to the extent such preference will inhibit the availability of qualified workers for the Project.

1.9 The Parties recognize the importance of solar power in assuring that California is provided with adequate supplies of alternative energy for economic growth, the creation of job opportunities and for a greater degree of energy independence. By entering into this Agreement, the Parties recognize the unique nature of a solar photovoltaic power plant and that the terms and conditions covered by this Agreement are therefore unique and limited to this Project. Accordingly, the Parties have in good faith arrived at the special conditions contained in this Agreement, and the parties agree to jointly work together to support the Project and make it successful.

2. SCOPE OF AGREEMENT

2.1 This Agreement covers the "Covered Work" described in this Section 2.1. Covered Work means the portion of the work within the craft jurisdiction of the Union and involved in (i) the installation of the Project's PV modules (includes all handling (including unloading, unpacking, uncrating, and staging) of PV modules after the first drop location), drive motors, combiner boxes, tracking control boxes, electrical conduit and wire trays, electrical devices, electrical components, electrical supports, inverter enclosures; (ii) all electrical wiring and cables, both below and above ground; all alternating current ("AC") and direct current ("DC") connections to inverters; and (iii) industry standard startup and commissioning, including loop checks, rework and modifications, and functional testing on the Project; and with respect to each of the foregoing and generally, excludes work set forth in Section 2.3. This Agreement will also cover any work done in temporary yards or facilities adjacent to or near the Project which are a part of and for the Project. The Owner, manufacturer's representatives, vendor's representatives, and plant operating personnel may supervise and direct Covered Work, and the Union agrees that craft work is typically performed as part of a joint effort with these representatives and personnel. A manufacturer or its representatives may perform industry standard work to satisfy its guarantee or warranty prior to startup of a piece of equipment.

After a system or subsystem becomes operational and upon acceptance by Owner, Covered Work on that system or subsystem is completed and no longer subject to this Agreement. Subject to the previous three (3) sentences, rework and modifications normally provided as a function of the construction effort, and other related work normally provided by members of the Union, will be performed by members of the Union. Nothing set forth in this Section 2.2 shall be construed as prohibiting or limiting permanent operating personnel from operating systems prior to Covered Work being completed.

2.2 Covered Work shall not include any work performed on or near the Project site by federal, state, county, city, or other governmental bodies and/or agencies or their contractors or work performed by utilities or their designated contractors or work performed by the Owner, manufacturer's representatives, vendor representatives or plant operating or their contractor personnel as discussed in Section 2.2. Fabrication provisions in local and/or national agreements shall not apply. Any pre-assembled or manufactured items produced in a manufacturing facility for the assembly or supply of products is excluded from the scope of this Agreement and shall not be considered subcontracting under Article 3 below. Covered Work shall not include (i) work to grade, clear, or prepare the construction site and installation or erection of panel supports or frames or tracking systems (other than motors mounted in the field); (ii) delivery or inspections by owner or employers of materials, shipments or equipment (including unloading, unpacking, uncrating, and staging of panels up to the first drop location); (iii) material delivery; (iv) trenching work, except when this work involves simultaneously laying cable, and the digging and construction of tunnels at the Project site; or (v) specialized technical work requiring specialized training, unique skills, or a level of specific technical experience which employees represented by the Union do not possess. At least one weeks' notice shall be given to the Union before any work is performed pursuant to this subsection 2.3(v).

2.3 This Agreement applies to all employees performing Covered Work. It does not apply to work which is not Covered Work, to supervisors not covered by a

collective bargaining agreement, to technical or non-manual employees including but not limited to executives, office and clerical personnel, drafters, engineers, timekeepers, messengers, or to any other employees above the classification of general foreman who perform administrative/clerical functions.

3. SUBCONTRACTING

3.1 Primary Employer and each other Employer agree that they will contract for the assignment, awarding, or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation, or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation, or other entity who is or becomes a party to this Agreement and who is or becomes signatory to either the Master Agreement of the Union or, in the case of a national contractor, a National Agreement. Any Employer performing Covered Work on the Project shall, as a condition to working on the Project, become signatory to and perform all Covered Work under the terms of this Agreement and the Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound. Every Employer shall notify the Union in writing within five business days after it has subcontracted work, and shall, at the same, time provide to the Union a copy of the executed Agreement to be Bound.

3.3 Any Employer not already bound to one of the agreements set forth in Section 3.2, who signs and becomes bound to such agreement to participate on this Project, shall not be required to apply the terms of that agreement to any other construction project in which such Employer is already engaged, or which such Employer has already become contractually bound to perform. Moreover, any Employer not already bound to the Master Agreement, who signs and becomes bound to the Master Agreement to participate on this Project, agrees to become a

signatory of the Master Agreement under this Agreement only until the expiration of the current Master Agreement or completion of Covered Work, whichever is later, and such signatory shall not automatically renew.

3.4 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer, or any other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract, or perform Covered Work shall be required to comply with the provisions of this Agreement with respect to the Covered Work. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding, or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement or National Agreement as provided in Section 3.2 above. Any Employer that fails to provide the Union with a copy of the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make for Covered Work on the Project.

4. WAGES AND BENEFITS

4.1 All employees covered by this Agreement (including foremen and general foremen) shall be classified and paid in accordance with the classifications and wage scales set forth in the Master Agreement except as otherwise provided in Article 7.

4.2 The Construction Wireman/Construction Electrician Memorandum & Addendum between L.U. 569, IBEW and San Diego Chapter, NECA shall be used for Covered Work as provided in Section 5.7 and unless further modified by this Agreement or the National Agreement. Subject to Section 5.7, Covered Work may

be performed by employees in a pre-apprentice classification (e.g., Construction Wireman), apprentice classification, journeyman classification, and/or any other classification.

4.3 All Employees, regardless of any Employee's originating location, will be dispatched from the Union's Imperial County hall such that no travel pay will be applicable to the Project.

4.4 Any special interest bargaining which establishes wage rates, benefits, classifications, zones, or wage escalations which apply exclusively to the Project will not be recognized. In addition, there shall be no redlining of the Project in future multi-employer collective bargaining agreements by singling out, either by name or by effect, the Project or the Employers for less favorable wages, benefits, or working conditions than are generally accorded other industrial projects in the same general geographic area.

5. UNION RECOGNITION AND REFERRAL

5.1 The Employers recognize the Union signatory to this Agreement as the sole and exclusive collective bargaining agent for its construction craft employees performing Covered Work for the Project, pursuant to Section 8(f) of the National Labor Relations Act, and further recognize the traditional and customary craft jurisdiction of the Union.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the appropriate Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 Subject to Section 2.3 and except for core members of the Employer's work force, the Union shall be the primary source of all craft employees for Covered Work for the Project. Employers agree that their core members will not exceed six employees for every 100 craft employees provided by the Union, who will be assigned as foremen or general foremen. Employers agree to be bound by the hiring practices of the Union, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 Employers will employ apprentices where work is within their capabilities in numbers determined by the Employer. The parties recognize that employing sufficient numbers of apprentices on the Project is needed in order to make the construction process cost effective and efficient and to develop a workforce for the growing solar industry. The Union will use its best efforts to dispatch as many apprentices as are requested and available and to recruit and increase the number of available apprentices, if apprentices are not available as requested by the Employer. If the Union is not able to supply enough apprentices to meet allowable apprentice ratios (see, e.g., Section 5.7), the Union shall meet in good faith with the Employer for the purpose of identifying a method to obtain additional apprentices.

5.5 The Union shall exert its utmost efforts, including requesting assistance from other local unions, to recruit a sufficient number of skilled craftsmen (including apprentices) to fulfill the manpower requirements of the Employers. In the event the referral facilities maintained by the Union does not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays, and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for those applicants from the Union within twenty-four (24) hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Union of such gate-hires.

5.6 Each Union shall have the right to designate a working journeyman as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his/her duties.

5.7 Employers may utilize employees in a pre-apprentice classification (e.g. Construction Wireman) for all work involving handling and installation of PV

modules through the connection of any electrical wires necessary to string the modules together, subject to adequate supervision by journeymen and apprentices. There shall be at least one (1) journeyman and one (1) apprentice for each four (4) pre-apprentices performing this work. This ratio may be established by considering all employees working on all work from panel handling and installation through the connection to the inverters. Any further work downstream of the inverters will be performed by either Apprentices or Journeymen such that there shall be one (1) journeyman for every one (1) apprentice for such work.

6. WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, handbilling where the handbilling relates to the Employer or Owner, disruptive activity, or interference with the work at the site by the Union, its agents, representatives, or by any employee for any reason, and there shall be no lockout affecting the Union by any Employer. Failure of any Union or employee to cross any picket line established at the Employer's Project site is a violation of this Article.

6.1.1 The parties acknowledge that work which is not Covered Work (as defined in this Agreement) may be performed by Primary Employer and/or Employers and/or others who are not parties to an applicable collective bargaining agreement. The Union agrees that the Primary Employer or Employers or others may perform both Covered Work and work which is not Covered Work, utilizing non-union workers of any trade for work which is not Covered Work. The Union agrees that if Covered Work and work which is not Covered Work is occurring simultaneously and in close proximity and/or in conjunction with each other, the Union shall permit and require its members to cooperate fully (as set forth in section 6.1 above) in performing all such work.

6.2 The Union shall not sanction, aid or abet, encourage, condone or participate in or continue any work stoppage, strike, picketing or any other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities

which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire.

6.3 The Union shall not be liable for acts of employees for which it has no responsibility. The principal officer or officers of a Union will immediately instruct, order and use the best efforts of his office to cause the employees the Union represents to cease any violations of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4 The Union agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Union shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing, handbilling, or interference with the work or any other disruptive activity in violation of this Article (collectively, a "Work Stoppage"), the Employer may suspend all or any portion of the Project work affected by such activity, or hire non-union labor to complete the affected activity while a Work Stoppage is in effect, at the Employer's discretion and without penalty.

6.5.1. If the Union violates this Article or recognizes a violation of another Union which is in violation of this Article, as a remedy for said violation, it agrees to pay liquidated damages in accordance with Section 6.6.8 of this Article.

6.6 In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union has been notified of the fact.

6.6.1. The party invoking this procedure shall notify Norman Brand or Joe Grodin whom the parties to this agreement agree shall be the permanent Arbitrators under this procedure. With 30 days written notice and agreement by

the Union, Primary Employer may replace any of the permanent Arbitrators with another Arbitrator with construction labor agreement experience. Such agreement shall not be unreasonably withheld. In the event that all of the permanent Arbitrators are unavailable at any time or upon an Employer's request, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the involved International Union President and/or local union.

6.6.2. Upon receipt of said notice, the Arbitrators named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

6.6.3. The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. The hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4. The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator may order cessation of the violation of this Article by the Union, and the award shall be served on all parties by hand or registered mail or by electronic mail upon issuance.

6.6.5. The award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued

under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail or by electronic mail. All parties waive the right to require the issuance of a bond or other security for issuance of an injunction or an appeal to a refusal to issue one under this Article.

6.6.6. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7. The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.8. If the Arbitrator determines that a violation by Union has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, \$25,000; for the second shift, \$30,000; for the third shift, \$35,000; for each shift thereafter on which the craft has not returned to work, \$35,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7 The procedures contained in Section 6.6 shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, with seventy-two (72) hours prior written notice to the Primary Employer, the Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails to make timely payments to the Union's benefit plans or fails to timely pay its weekly payroll in accordance with its agreements with the

Union; provided, however, that in the event the Union or any of its members withhold their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 The Master Agreement in effect as to the Union on the Effective Date of this Agreement shall govern for two (2) years following the Effective Date of this Agreement. In the event that the Covered Work on the Project is not completed within two (2) years following the Effective Date of the Agreement, the Master Agreement in effect on that date (i.e., the date two (2) years following the Effective Date of the Agreement) shall govern, except to the extent it conflicts with the provisions of this Agreement, in which case the provisions of the Agreement shall prevail. In the event that a Master Agreement is not in effect on the date two (2) years following the Effective Date of the Agreement, the Union shall continue to provide employees to the Employers working on the Project under all the terms of the Master Agreement in effect as of the Effective Date of this Agreement until a new Master Agreement is entered into, at which time all terms and conditions of the new Master Agreement shall apply to Covered Work at the Project from the effective date of the new Master Agreement, except to the extent they conflict with any provision of this Agreement, in which case the terms of this Agreement shall prevail.

7. WORKING CONDITIONS

7.1 Notwithstanding the provisions of the Master Agreement, National Agreement, or any other local, area, regional, or national collective bargaining agreement, the Employer and the Union agree to the following working conditions set forth in this Section 7.1 for the Project. The Employer and the Union may negotiate in good faith and agree to modify the working conditions set forth in this Section 7.1 if necessary to allow the Project to be completed in a high quality manner, on schedule, and cost competitive.

7.1.1 Work Day and Work Week. For the first or initial shift, up to ten (10) hours per day between the hours of 4:00 A.M. and 5:30 P.M., plus one-half

(1/2) hour unpaid for lunch, approximately midway through the shift, shall constitute the standard work day. Forty (40) hours per week shall constitute a regular week's work. The forty hours can be worked over four days (ten hours/day) or five days (eight hours/day). The work week will start on Monday for a five day work week, and on Monday or Tuesday for a four day work week. A uniform starting time will be established for the Project or segment of the work. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week. The Union shall be informed of the work starting time set by the Employer at the pre-job conference, which may be changed thereafter upon three (3) days' notice to the Union and the employees.

7.1.1.1 The hours of work per work week day, including start times and end times, shall not apply with respect to work for which special hours of work have been established in contract specifications or otherwise by the Owner because of either (1) special construction requirements necessary to comply with regulations of state agencies having regulatory jurisdiction or permit authority over the Covered Work, or (2) mitigation measures specified in the final environmental impact report for the Covered Work.

7.1.2 Starting Times. Employees shall be at their place of work at the starting time and shall remain at their place of work (as designated by the Employer) performing their assigned functions until quitting time, which is defined as fifteen (15) minutes before the scheduled end of the shift. This fifteen (15) minutes shall be used for pickup, clean up, and travel. The place of work shall be defined as the gang or tool box, or equipment at the employee's assigned work location, or the place where the foreman gives instructions. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the Employer.

7.1.3 Shifts. Shift work may be performed at the option of the Employer upon three (3) days' prior notice to the Union, and shall continue for a period of not less than five (5) working days; provided that a work week of four (4)

consecutive ten (10) hour work days may be established pursuant to this Agreement for shift work. If two shifts are worked, each shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period; provided that a work week of four (4) consecutive ten (10) hour work days may be established pursuant to this Agreement for shift work. Any third shift shall consist of six and one-half (1 1/2) hours of continuous work exclusive of one-half (1/2) hour non-paid lunch period for eight (8) hours straight time pay without any premium or differential. Shift differential premiums shall be paid for any second or third shifts worked.

7.1.4 The Employer may, upon five (5) days' notice to the Union, establish a work week of four (4) consecutive ten (10) hour work days (exclusive of one-half hour unpaid lunch, approximately midway through the shift). Such work week shall consist of the same four days each week.

7.1.5 Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Employees who are directed to start work and who work at least two (2) hours but less than four (4) hours shall receive four (4) hours pay at the regular straight time hourly rate. Employees who work beyond four (4) hours, but less than six (6) hours shall be paid for six (6) hours, and employees working beyond six (6) hours shall be paid for eight (8) hours at the regular straight time hourly rate. Whenever reporting pay is provided for employees, they will be required to remain at the Project site available for work for such time as they receive pay, unless released earlier by the principal supervisor of the Employer or their designated representative. Each employee shall furnish his Employer with his current address and telephone number, and shall promptly report any changes in each to the Employer.

7.1.6 When an employee leaves the job or work location of his own volition or is discharged for cause, the employee shall be paid only for the actual time worked.

7.1.7 Meal Period. The Employer will schedule a meal period not more than one-half (1/2) hour duration at the work location at approximately the mid-point of the scheduled work shift; provided, however, that the Employer may, for efficiency of the operation, establish a schedule which coordinates the meal periods for employees.

7.1.8 The Employer and the Union may negotiate in good faith and agree to weekend work if necessary to allow the Project to be completed on schedule. In addition to the negotiation described in Section 9.1.13, within one month of commencing continuous PV module installation, the Primary Employer, the Owner, and any other Employer involved in PV module installation shall meet to review the productivity of installing PV modules and techniques to improve productivity. The parties will negotiate in good faith to revise the Expected Standard to reflect this initial experience; provided that the parties will not revise the Expected Standard if the Primary Employer or any other Employer demonstrate that PV module installation standards similar to the Expected Standard are being met on a similar project, whether union or non-union. After one month of commencing PV module installation, in the event the installation of PV modules is routinely (for purposes of this Section 7.1.8, "routinely" means two (2) or more days out of any rolling two (2) work week time period) failing to achieve the Expected Standard set forth in Section 9.1.13, the Employer may establish an additional work week schedule that includes work on Saturday installing PV modules at the straight time rate of pay for all classifications working on module installation until the installation of PV modules is back on schedule. Prior to implementing this Section, the Employer will submit to the Union proof that Expected Standard has not been met because of the pace of production by members of the Union. This Section 7.1.8 may not be implemented for reasons beyond the Union's or employee's control, such as a compressed schedule, lack of material, slower production of work on the Project outside the scope of this Agreement, or unusually adverse weather conditions. This Section 7.1.8 is only intended to ensure agreed upon PV installation production by Union members. Any disputes under this Section 7.1.8 shall be determined by binding

arbitration in accordance with the arbitration provisions set forth in Section 6.6 of this Agreement, except that Section 6.6.8 shall not apply to disputes under this Section 7.1.8.

7.2 Notwithstanding the provisions of the Master Agreement, National Agreement, or any other local, area, regional, or national collective bargaining agreement, the Union acknowledges that the Project site can experience high temperatures and agrees that Employer is not required to provide any temperature controlled environment for employees either during work or break periods.

8. GRIEVANCE PROCEDURE AND JURISDICTIONAL DISPUTES

8.1 Any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes or successorship) shall be considered a grievance. Questions between or among parties signatory to the Master Agreement arising out of or involving the interpretation of the Master Agreement shall be resolved under the grievance procedure provided in the Master Agreement.

8.2 The Primary Employer and other Employers, as well as the Union, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or reasonably should have been discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays, or holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be

entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9 Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10 In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance. Failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance to the other without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances.

8.11 In order to encourage the resolution of disputes and grievances, the Parties agree that settlements shall not be precedent setting.

8.12 Individual seniority shall not be recognized or applied to employees working under this Agreement.

8.13 The Employer shall establish and employees shall observe such reasonable project job site work rules as the Employer deems appropriate. These rules will be reviewed and discussed at the pre-job conference, distributed to all employees, posted at the project site by the Employer, and may be amended thereafter as necessary.

8.14 In the event of any jurisdictional or similar dispute between Union and any other union or bargaining unit which Employer is bound to, Union agrees to cooperate with Employer and such other union or bargaining unit to expeditiously and efficiently resolve such jurisdictional or similar dispute. Union will utilize its best efforts to work with Employer and/or the other union or bargaining unit to have any such jurisdictional or similar disputes resolved by the permanent arbitrator(s) specified in Section 6.6 of this Agreement. If the other union or bargaining unit does not so agree, Union shall act in good faith to attempt to promptly otherwise resolve the jurisdictional dispute.

9. MANAGEMENT RIGHTS

9.1 Notwithstanding any provision to the contrary in the Master Agreement, National Agreement, or any other local, area, regional, or national collective bargaining agreement the Employer retains and shall exercise full and exclusive authority and responsibility for the management of its operations and work forces, except as expressly limited by the terms of this Agreement. This authority includes, but is not limited to, the right to:

9.1.1. Plan, direct and control the operation of all the work and the work force.

9.1.2. Subject to Sections 5.7, decide the number and type of employees (including pre-apprentices and apprentices) required for the work on both a daily basis and a project basis.

9.1.3. Hire, promote, and layoff employees as deemed appropriate to meet work requirements and/or skills required, and to select and hire directly all supervisory personnel above the classification of general foreman it considers necessary and desirable, without such persons being referred by the Union.

9.1.4. The selection of foremen.

9.1.5. Discharge, suspend, or discipline employees for just cause as provided in the work rules.

9.1.6. Require all employees to observe the Employers' and Owners' reasonable Project Rules, Security, Environmental and Safety Regulations, consistent with the provisions of this Agreement. These Project Work Rules and Regulations shall be supplied to the Union, to all employees and posted on the job site.

9.1.7. Determine the competency of all employees.

9.1.8. Assign and schedule work crews at its sole discretion and determine when overtime will be worked and the number of employees engaged in such work. There shall be no refusal by the Union to perform work, including overtime work, assigned.

9.1.9. Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer, or designer.

9.1.10. The Union understands the importance of maintaining construction quality and maintaining the construction schedule. The Union also understands the unique nature of solar photovoltaic work and that construction errors or delays in construction can result in the loss of production, which creates a great loss to Primary Employer. Therefore, the Union will encourage and advise the employees to exhaust every effort, ways, and means to perform work of good quality and quantity. The Parties recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs, or practices shall be permitted that limit production, efficiency, or increase the time required to

do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery, tools, or labor-saving devices. No rule or regulation shall be adopted that compromises employee safety. Nothing in this Agreement shall require any employee to engage in an unsafe work practice. The Employer may utilize any methods or techniques of construction, tools, or other labor saving devices to accomplish the work.

9.1.11. There shall be no limitation or restriction by Union upon an Employer's choice of materials or design, nor upon the full use and utilization of equipment, machinery, packaging, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor saving devices. For Covered work, the on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by Owner or Employer may be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role, or, in limited circumstances requiring special knowledge of the particular item(s), may be performed by employees of the vendor or other companies where necessary to protect a manufacturer's warranty or where the employees working under this Agreement lack the required skills to perform the work.

9.1.12. The use of new technology, equipment, machinery, tools, and/or labor saving devices and methods of performing work may be initiated by Employer from time-to-time during the Project. Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Employer and Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Employer, and Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 8 of this Agreement.

9.1.13. Subject to Section 7.1.8, establish performance standards for the installation of PV modules and DC connections. The performance standard for

installation of PV modules shall be a number of panels installed per employee per day that is consistent with efficient installation in the photovoltaic solar industry. The performance standard for installation of DC connections shall be a number of connections installed per employee per day that is consistent with efficient installation in the photovoltaic solar industry. The Union and the Primary Employer agree to the performance standards set forth in Attachment B for the installation of PV modules and DC connections for panel technology as of the Effective Date of this Agreement. The Parties agree that these performance standards are subject to modification based on the type and model of the module and installation method selected for the Project, experience as the Project progresses, and advancements in labor automation processes in solar technology. The Employer and the Union agree to negotiate in good faith and agree to modify the performance standards as necessary to account for the precise type and model of equipment selected for the Project, experience as the Project progresses and advancements in labor automation and solar technology and that allow the Project to be completed in a high quality manner, on schedule, and cost competitive. In addition to the performance standards established by this Section 9.1.13, the Union agrees that the employees shall abide by the IBEW Code of Excellence, a copy of which is included as Attachment C and incorporated by reference.

9.1.13.1. As set forth in Attachment B, there shall be an expected performance standard ("Expected Standard") for installation of PV panels and for DC connections. It is expected that the Union will provide a workforce that is capable of meeting or exceeding the Expected Standard.

9.1.13.2. If for any reason the actual performance falls below the Expected Standard, the Employer may, at its sole discretion, replace employees or entire crews in order to meet the Expected Standard. The Union acknowledges that replacement of underperforming employees or crews is within the right of the Employer, and will support the Employer in such actions, and provide replacement labor as requested.

9.1.14. The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically enumerated in this Agreement.

9.2 All Employers may utilize the substance abuse and testing program contained in the Master Agreement. If requested by the Primary Employer, the Primary Employer and the Union will negotiate a substitute program consistent with construction industry standards in the area.

10. SUCCESSORSHIP AND SURVIVABILITY

10.1 The subcontracting obligations described in Article 3 are independent obligations of Primary Employer which shall survive any full or partial termination of Primary Employer's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Primary Employer's right to control and coordinate construction work on the Project; (ii) any full or partial termination or transfer of a contract, if any, between Primary Employer and any Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Project Owner; or (iv) any other event that results in the replacement of Primary Employer with another contractor. This Agreement shall not be binding upon any successor or transferee who takes title to or control of the site from Owner by reason of the default of Primary Employer or Owner or because of the bankruptcy or insolvency of the Owner.

10.2 The Parties agree that: (i) if Primary Employer's involvement in the Project is terminated as described in Section 10.1, and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Primary Employer shall pay liquidated damages, as described in Section 10.3, to compensate for the actual damages caused by reason thereof. The parties agree that such damages would be unreasonably difficult, costly, inconvenient or impracticable to calculate and, accordingly, they agree to liquidated damages which bear a reasonable relationship to the actual harm suffered by the Union and its members, as provided in Section 10.3 ("Liquidated Damages").

10.3 In that Liquidated Damages are owed as described in Section 10.2, Primary Employer shall pay \$30.00 for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signatory to this Agreement. The Liquidated Damages shall be paid as follows: Fifteen Dollars (\$15.00) per hour to the qualified pension plan and Fifteen Dollars (\$15.00) per hour to the qualified health and welfare plan of the signatory Union(s) having jurisdiction over the work performed by the contractor(s) or subcontractor(s) not signatory to this Agreement. The parties agree that a Union shall enforce, collect and receive Liquidated Damages pursuant to Article 10 on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to independently enforce the provisions, including, but not limited to, the Liquidated Damages provisions contained in Article 10. This Agreement to pay liquidated damages does not constitute a waiver of the Primary Employer's ability to contest any claim that it has violated Article 10 or the calculation of the amount of liquidated damages owed.

10.4 Upon execution and delivery of an agreement assuming all the obligations of this Agreement by a contractor capable of performing the Covered Work, and acceptance of this agreement by the Union, Primary Employer shall be released from liability for the payment of liquidated damages under Section 10.3 and shall have no liability for any breach of this Agreement by a successor employer or contractor.

10.5 This Article 10 shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

11. GENERAL PROVISIONS

11.1 If any article or provision of this Agreement shall become invalid, inoperative, and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or local government, the Parties shall suspend the operation of such article or provision during the period of its invalidity, and the Primary

Employer and the Union shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by the Primary Employer and the Union shall be binding on all parties signatory to this Agreement. At all time relevant the provisions of Article 6 will apply.

11.2 If any article or provision of this Agreement shall be held invalid, inoperative, or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

11.3 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement shall apply.

11.4 Any modifications, amendments, or supplements to this Agreement may be entered into between the Primary Employer and the Union.

11.5 The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement, National Agreement, or any other local, area, regional, or national collective bargaining agreement. If there is any conflict in any of the provisions, the terms of this Agreement shall govern.

11.6 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

11.7 Any notices required under this Agreement shall be given as follows. Either party may notify the other in writing if its person designated to receive notice is changed.

To EPC:

Allen Brown
Cupertino Electric
1132 N. 7th Street
San Jose, CA 95112

To the Union:

Johnny Simpson, Business
Manager
IBEW 569
4545 Viewridge Avenue
Suite 100
San Diego, CA 92123-1623
Telephone: (858) 569-8900

To the Owner:

Tom Buttgenbach
10100 Santa Monica
Blvd., Suite 300
Los Angeles, CA 90067

With a copy to:

With a copy to:

With a copy to:

Marc D. Joseph
Adams Broadwell Joseph &
Cardozo
601 Gateway Boulevard,
Suite 1000
South San Francisco, CA
94080
Telephone: (650) 589-1660
Fax: (650) 589-5062

11.8 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

12. TERM OF AGREEMENT

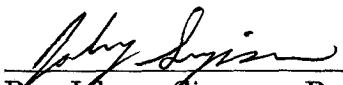
12.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work on the Project pursuant to Article 2.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be
executed and effective as of January 31, 2012 (the "Effective Date").

CUPERTINO ELECTRIC, INC.
Primary Employer:

By: 

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 569

By:  Johnny Simpson, Business Manager

**ATTACHMENT A
AGREEMENT TO BE BOUND**

**PROJECT LABOR AGREEMENT
MIDWAY II SOLAR PROJECT**

The undersigned hereby certifies and agrees that:

- 1.) It is an Employer as that term is defined in Section 1.6 of the Midway II Solar Project Labor Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, pursuant to Section 8(f) of the National Labor Relations Act, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)

ATTACHMENT B
PERFORMANCE STANDARDS
PANEL TECHNOLOGY AS OF THE EFFECTIVE DATE

The installation of PV modules and DC connections shall meet the performance standards set forth in this Attachment B for the installation of PV modules and DC connections for panel technology as of the Effective Date of this Agreement.

The performance standard for installation of PV modules shall be a number of panels installed per employee per day that is consistent with efficient installation in the photovoltaic solar industry. The following table sets forth the Expected Standard for installation of PV modules:

Harnessing Method	"Slip clip" Type (used for thin-film like First Solar modules)	Bolted Type (used for all types of modules)
Expected Standard	200	180

ATTACHMENT C
IBEW CODE OF EXCELLENCE