

CLEAResult

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "**Agreement**") dated effective February __, 2017 (the "**Effective Date**"), is between CLEAResult Consulting Inc., a Texas corporation and/or an affiliate thereof ("**CLEAResult**"), and Davis Joint Unified School District, a school district located in Yolo County, California ("**District**").

BACKGROUND

- A. CLEAResult helps utilities, businesses and individuals make the wise use of energy a way of life.
- B. District owns and operates local public primary and secondary schools.

C. District and CLEAResult contemplate that CLEAResult will provide its services (the "**Services**") to District under one or more Statements of Work (as defined below) in the format attached to this Agreement and incorporated as Exhibit A. The purpose of this Agreement is to set forth the terms and conditions that will govern each of those Statements of Work.

AGREEMENT

The parties incorporate into this Agreement the above Background provisions and agree as follows:

1. Scope.

a. This Agreement sets forth the terms that apply to each Statement of Work ("**SOW**") issued to CLEAResult for Services. Each SOW is subject to the terms and conditions of this Agreement. In the event of any conflict or inconsistency between the terms or conditions of this Agreement and any provision in an SOW, this Agreement shall control unless such term or condition is explicitly superseded in the applicable SOW. CLEAResult will not become obligated in any way to District until District places an SOW with CLEAResult and CLEAResult accepts that SOW.

b. District may propose additional SOWs at any time by submitting to CLEAResult an SOW executed by District. Each additional SOW will be numbered sequentially (i.e., SOW No. 1, SOW No. 2, and so on) and be substantially in the same format set forth in Exhibit A. CLEAResult may accept an SOW only by executing that SOW and returning it to District.

c. CLEAResult will complete the Services (i) in a professional, competent, and reasonably efficient manner in accordance with the prevailing standards in CLEAResult's industry; (ii) in accordance with the work schedule and for the price set forth in the SOW; and (iii) in accordance with applicable laws and regulations.

2. Term and Termination.

a. The term of this Agreement ("**Term**") is from the Effective Date and remains in effect until terminated pursuant to this Section 2.

b. Either party may terminate this Agreement by providing forty-five (45) day notice, with or without cause, at any time before its expiration following written notice of deficiency to the other party and a reasonable period to cure.

c. Upon termination of this Agreement, the parties agree to cooperate with one another wind up work under any active SOWs and to transfer pending work to other persons designated by District. Upon termination, the parties shall immediately deliver to one another all of the other party's property and copies of all documentation (in written, printed, disk, and other form, including all applicable source and object codes) prepared or used under this Agreement, whether or not previously delivered

d. CLEAResult shall be entitled to receive accrued but unpaid compensation and reimbursement as of the date of termination for authorized services actually and properly performed as of the termination date as well as services committed to by CLEAResult prior to termination.

e. The provisions of Sections 2 and 4 through 9 shall survive termination of this Agreement.

3. Payment. District agrees to compensate CLEAResult (in United States currency) as described in the applicable SOW. If not otherwise specified in the SOW, CLEAResult shall invoice District, and District shall make payment to CLEAResult within thirty (30) days of receipt of that invoice.

4. Independent Contractor Relationship.

a. Description of Relationship. This Agreement shall not create the relationship of employer and employee, a partnership, or a joint venture. Each party shall be solely liable for the wages, fringe benefits, payroll taxes, work schedules and work conditions of any assistants, partners or employees that that party may engage. For any assignment of work from District, CLEAResult shall determine the days and hours of performance necessary to complete the assignment, as well as the number of any assistants, partners or employees. CLEAResult may contract with one or more qualified subcontractors to perform a portion of the work specified in any applicable SOW.

b. CLEAResult's Responsibility for Taxes, Licenses and Insurance. CLEAResult agrees that it is solely responsible for, and will pay all costs of conducting its independent business, including but not limited to the expense and responsibility for obtaining: (i) any applicable auto insurance and general business liability insurance; (ii) any city, county, state or federal licenses, permits or related assessments or taxes of any kind. At District's request and within a reasonable amount of time, CLEAResult shall present District with compliant certificates establishing District as an additional named insured on its auto insurance policy. Upon request, CLEAResult will provide District with updated insurance certificates as appropriate but no less frequently than every time the auto policy is renewed or modified. CLEAResult agrees to maintain the following minimum levels of coverage: (i) statutory limits on Workers Compensation coverage sufficient to cover all of CLEAResult's personnel who will participate in performing the Services; (ii) commercial general liability (occurrence type) with a \$2,000,000 aggregate limit; and (iii) automobile liability coverage (including coverage over owned, non-owned and hired vehicles) with a \$1,000,000 combined single limit. CLEAResult shall be responsible for payment of any and all self-employment taxes including but not limited to federal or state income taxes, social security taxes, and worker's compensation premiums

c. Representation to the Public. CLEAResult and District shall represent to the public that any labor or Services to be provided by CLEAResult are provided in its capacity as an independently established business.

d. Authority. The parties shall have no authority to make expenditures, bind, obligate or commit one another by any promise or representation without the prior written approval of the other party

5. Conflicts of Interest; Nonsolicitation.

a. During the Term of this Agreement, CLEAResult is free (subject to Section 5(c)) to perform services for other businesses or persons so long as such other work does not interfere with CLEAResult's ability to perform the Services or the actual performance of the Services.

b. The parties agree that during the Term of this Agreement and for a period of one (1) year thereafter (the "**Restriction Period**") for itself or on behalf of another, neither party nor any of its officers, directors, owners, employees, or agents will, without the consent of the other party (which may be withheld or conditioned in the other party's absolute discretion), solicit any employee of the other party to become an employee or independent contractor of any other person or entity, suggest to an employee of the other party that the employee should reduce or terminate the employee's relationship with the other party, or hire as an employee or engage as an independent contractor any person who was an employee of the other party at any time during the Restriction Period.

c. The parties acknowledge and agree that each restriction contained in this Section 5 (each, a "**Restriction**") is reasonable in scope and time and that the Restrictions afford a fair protection to the interests of the other party.

6. Intellectual Property.

a. Any invention, discovery, work of authorship, trade secret, report, or other tangible or intangible item and all intellectual property rights therein that CLEAResult is required to deliver to District as a part of the Services is deemed "**Work Product.**" District and CLEAResult agree that such original works of authorship are "works made for hire" of which District is the author within the meaning of the United States Copyright Act.

b. If any Work Product incorporates pre-existing intellectual property owned by CLEAResult, CLEAResult grants to District a nonexclusive, worldwide, royalty-free, irrevocable license (with rights to sublicense to others) in such pre-existing intellectual property to translate, reproduce, distribute, and prepare derivative works, to publicly perform, and to publicly display all Work Product and to authorize others to do so. The scope of this grant is limited to the Work Product, and CLEAResult does not grant any rights to pre-existing intellectual property owned by CLEAResult that are not expressly granted in this Section 6.

c. In the event that any Services or any Work Product incorporates third-party intellectual property, CLEAResult shall obtain all necessary licenses or permissions on behalf of District in advance in order to perform the Services or to deliver the Work Product.

7. Confidentiality.

a. Neither party will use any Confidential Information of the other party for any purpose other than as needed to perform its obligations under this Agreement. Each party will hold all Confidential Information of the other party in strict confidence and will not disclose any Confidential Information to any person other than to its employees and independent contractors who: (i) have a "need to know;" (ii) have been advised of the confidential and proprietary nature of the Confidential Information; and (iii) have signed a written agreement that is as protective of the Confidential Information as that set forth in this Section; except as compelled by court order or otherwise required by law. If either party is required by law to disclose Confidential Information, that party will immediately notify the other party and cooperate with the other party to obtain a protective order or other appropriate remedy to maintain the confidentiality of the information.

b. The term "**Confidential Information**" means all information and materials relating to either party's business, in whatever form or medium, disclosed to or received by the other party, whether visually, by perception, orally or in writing, whether disclosed before or after the Effective Date, and whether or not specifically marked or otherwise identified as "Confidential" or "Proprietary," including all summaries and notes prepared by or on behalf of either party, except that "Confidential Information" does not include any information that the receiving party demonstrates: (i) has become generally available to the public without breach of this Agreement; (ii) was later received by that party from another person who did not violate any duty of confidentiality; or (iii) was developed by that party without use of any Confidential Information by persons who were not exposed to the Confidential Information.

8. Indemnity; Limitation on Damages. To the fullest extent permitted by law, the parties shall indemnify, defend, reimburse, and hold harmless each other and their successors, respective directors, officers, members, employees, representatives, and agents from, for, and against any and all allegations, claims, liens, liabilities, losses, demands, damages, expenses, suits, actions, proceedings, judgments, and costs of any kind whatsoever, whether actual or merely alleged and whether directly incurred or from a third party, including, without limitation, settlement costs, court costs, and attorneys' and expert witness fees and expenses, arising out of, or relating to: (a) the Services or any Work Product; (b) conduct of the indemnifying party, its employees, agents, subcontractors at any tier or independent contractors (including the filing of any liens); (c) infringement or misappropriation of any intellectual property right of any third party; (d) personal injury (including death) and property damage (real and personal, tangible or intangible, resulting in physical or solely economic losses); (e) negligence or willful misconduct; or (f) breach of confidentiality obligations. NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED REVENUE, PROFITS, OR GOODWILL, WHETHER ARISING IN NEGLIGENCE, BREACH OF CONTRACT, OR UNDER STATUTE OR RULE. LIABILITY OF CLEAResult UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT CLEAResult RECEIVES IN EXCHANGE FOR SERVICES AND REIMBURSABLE EXPENSES UNDER THIS AGREEMENT. LIABILITY OF DISTRICT UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT DISTRICT IS OBLIGATED TO PAY IN EXCHANGE FOR SERVICES AND REIMBURSABLE

EXPENSES UNDER THIS AGREEMENT

9. Miscellaneous.

a. Applicable Law; Arbitration; Remedies.

i. This Agreement shall be governed by and construed under the laws of the State of California, without regard to conflict of law rules.

ii. Any dispute or claim that relates to this Agreement, its interpretation or breach, or to the existence, scope, or validity of this Agreement or this arbitration provision, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court with jurisdiction. The parties acknowledge that mediation helps parties settle their disputes and any party may propose mediation whenever appropriate through the Arbitration Service of Portland, Inc. or any mediator selected by the parties. Any dispute or claim for which a party seeks injunctive relief, even if contrary to the language of this section, may be brought in the state and federal courts in Yolo County, California, and such courts shall be the proper and exclusive forum for any such action.

iii. District acknowledges that in the event of a breach of Sections 2 or 4 through 8, the damage to CLEAResult would be irreparable and extremely difficult to estimate, making any remedy at law or in damages inadequate. Thus, in addition to any other right or remedy available to it, CLEAResult shall be entitled to an injunction restraining such breach or threatened breach and to specific performance of any provision of Sections 2 or 4 through 8, and in any case no bond or other security shall be required.

b. Attorney's Fees. In the event an action is brought to enforce any provision of or declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal costs including attorney fees the prevailing party incurs, including, but not limited to, those related to or arising from any appeal.

c. Notices. Except as otherwise provided in the Agreement, all notices or other communications under this Agreement must be in writing and delivered to the addresses below the signatures to this Agreement. Notices will be deemed accepted three (3) business days after the date of mailing. Addresses may be changed by notice given by such party to the other pursuant to this section or by other form of notice agreed to by the parties.

d. Assignment. Neither party shall assign this Agreement, except to an affiliate, without the prior written permission by the other party.

e. Entire Agreement; Counterparts. This Agreement, including the Background sections and any exhibits, schedules or attachments (all of which are incorporated into this Agreement by this reference), contains the entire agreement of the parties regarding the subject matter described in this Agreement, and all other promises, representations, understandings, arrangements and prior agreements related thereto are merged in this Agreement and superseded by this Agreement. The provisions of this Agreement may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought. This Agreement may be executed in two (2) or more counterparts, all of which will constitute but one and the same instrument.

f. Severability. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions in this Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

g. Waiver of Breach. The failure of either party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the party under this Agreement, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance.

h. Opportunity for Counsel Review. The parties expressly acknowledge that each has read the terms of this

Agreement and that each party has had the opportunity to discuss the terms of this Agreement with independent legal counsel.

i. Force Majeure. Neither party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, or other catastrophic event beyond the reasonable control of the affected party, provided the affected party immediately notifies the other party and takes reasonable and expedient action to resume operations.

j. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or liabilities upon any person that is not a party to this Agreement, except as expressly provided in this Agreement.

The parties to this Agreement have executed this Agreement as of the Effective Date.

CLEARresult

CLEARresult Consulting Inc.

By: _____

Name: Nick Brod

Title: Vice President – West Region

Notice Address:

Attn: Legal Department

100 SW Main St, Suite 1500

Portland, OR 97204

Email: legal@clearresult.com

Phone: 503-248-4636

District

Davis Joint Unified School District

By: _____

Name: _____

Title: _____

Notice Address: _____

E-mail: _____

Phone: _____

EIN: _____

EXHIBIT A
STATEMENT OF WORK UNDER MASTER SERVICES AGREEMENT

1. General Scope. As required in the Master Agreement, this SOW defines the Services. The parties intend for CLEARResult to perform the planning work from the Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Guidelines (“PROPOSITION 39 GUIDELINES”).

2. Budget.

a. Billing Rates and Payment Methodology. This Agreement is based upon the following charges.

Site	Sq Ft
Davis Senior H.S.	222,425
Total (1 Site)	222,425

Audits (\$0.11/sq. ft. and min. \$12,500)	\$24,466.75
Benchmarking (\$600/site)	\$600.00
Energy Expenditure Plan (\$700/site)	\$700.00

The District is eligible for up to a \$20,000 discount for benchmarking, audit, and energy expenditure plan services through the SEE Prop 39 Bonus. This discount is eligible with a 50% co-pay from the District. As long as the District takes advantage of at least \$40,000 in benchmarking, audit, and energy expenditure plan services through CLEARResult, the \$20,000 discount will apply. The SEE Prop 39 Bonus can be claimed through an instant discount on CLEARResult’s invoice resulting in lower out-of-pocket cost to the District.

SEE Bonus (50%)	(\$12,883.38)
Total Not to Exceed.....	\$25,766.75
	(\$12,883.37 on the condition that the District qualifies for the discount)

b. Payment. CLEARResult will provide District with an itemized invoice referencing this Agreement on the face of the invoice. Payment will be processed within thirty (30) days of such invoice approval. Payments to CLEARResult not made by wire transfer shall be mailed to:

CLEARResult Consulting Inc.
P.O. Box 732986
Dallas, TX 75373-2986

All invoices shall be mailed, e-mailed or hand delivered to:

Davis Joint Unified School District
1919 5th Street
Davis, CA 95616
E-mail: gparker@djUSD.net

3. Task.

The services and pricing included in this Agreement cover the District’s PROPOSITION 39 GUIDELINES **planning work only**. The services in this Agreement cover audits, benchmarking, energy efficiency rebate processing and energy expenditure development for one (1) site, representing a total of 222,425 square feet. Pacific Gas and Electric Company School Energy Efficiency Program, including Proposition 39 Bonus, and Analytics-enabled Retro-Commissioning (ARCx) Program and incentives will be leveraged wherever possible to minimize financial impact to the DISTRICT.

District Schools Included in SOW:

Site	Sq Ft
Davis Senior H.S.	222,425
Total (1 Site)	222,425

4. Change Procedure. The Master Agreement, including any exhibits, schedules or attachments including this SOW, contains the entire agreement of the parties regarding the subject matter described in it. In the event of any conflict between the terms and conditions of the Master Agreement and this SOW, the applicable term or condition of the Master Agreement supersedes the conflicting term or condition in this SOW, unless the parties clearly express in writing that the SOW includes a change to the Master Agreement. The provisions of this SOW may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought. This SOW may be executed in two (2) or more counterparts, all of which will constitute but one and the same instrument.