**Exhibit D**

**BAY AREA SUNSHARES PROGRAM –BUSINESS COUNCIL ON CLIMATE CHANGE**

**INSTALLER AGREEMENT SAMPLE**

[DATE], 2020

*Re: Bay Area SunShares Program*

Dear Installer,

Congratulations on your selection as a solar photovoltaic (“PV”) Installer for the Bay Area SunShares Program (SunShares) administered by Community Initiatives, a California nonprofit corporation recognized as exempt under Internal Revenue Code Section 501(c)(3) (“Community Initiatives”), through its fiscally sponsored program, Business Council on Climate Change. Business Council on Climate Change is looking forward to working with you to increase outreach, education, and adoption of solar photovoltaic (“PV”) systems within the San Francisco Bay metro area and outlying counties (“Program Area”) in order to reduce greenhouse gas emissions and protect the environment.

This Letter Agreement (the “Agreement”) is intended to be a binding contract and will set out the mutual understanding between Community Initiatives, acting through its fiscally sponsored program titled Business Council on Climate Change (referred to herein as “BC3” or “Business Council on Climate Change” when acting through its internal program) and [\_\_\_\_\_] (the “Installer”) regarding the Installer’s and its associated team’s participation in this SunShares program, and shall be effective as of [date] (the “Effective Date”). BC3, and Installer are referred to herein as the “Parties” and each a “Party”.

WHEREAS, BC3, through its SunShares program, specializes in the design and administration of collaborative clean energy purchasing programs that make solar energy solutions simple and cost effective, with the goal of increasing solar adoption to ultimately reduce greenhouse gas emissions and protect and preserve the environment.

WHEREAS, BC3 has collaborated with local governments and private employers throughout the Program Area in connection with the SunShares program (the “Participating Organizations”) to encourage their residents, employees, and other constituents (the “Community”) to participate in the SunShares Program (hereinafter the “Program”);

WHEREAS, BC3 will administer the Program on behalf of the Participating Organizations and Community in the Program Area;

WHEREAS, BC3 is facilitating and administering the Program on behalf of the Participating Organizations and the Community members (as further outlined in the Request for Proposal) in their individual and personal capacities in the Program Area where Community members may live and/or work (individuals who sign up to participate in the Program hereinafter referred to as “Program Participants” and/or “homeowners”);

WHEREAS, Installer is [a corporation, partnership, LLC, unincorporated association, sole proprietorship, individual, etc.] with an address located at [address] and is experienced in the installation of solar PV systems;

WHEREAS, as part of the Program administered by BC3, Installer has been selected, based upon established objective criteria, by a participant evaluation committee composed of independent members of the Community as a contractor for the installation of PV systems on the homes of Program Participants who are property owners participating in their individual and personal capacities in the Program; and

WHEREAS, BC3 and Installer desire to formalize their legal relationship regarding the Program, and related work and obligations to each other under the Program;

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, and in consideration of Installer’s participation in the Program, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. **SunShares Program**

Installer agrees to assist BC3, as further set forth herein, in implementing the 2020 SunShares Program, which will seek to drive the adoption of residential solar PV projects in order to reduce greenhouse gas emissions and protect and preserve the environment.

1. **BC3 Commitments**

BC3 agrees to provide Installer with the following, provided that the Installer meets the terms and conditions in Section 3 of this Agreement:

1. Grant to the Installer as part of working with the Community, an exclusive, transferable, sublicenseable and limited license to use, copy, display and distribute the BC3 and SunShares logo only for marketing and outreach purposes while working directly on the Program within the Program Area in order for the Installer and Community to attract participation in the Program for the purpose of increasing the adoption of solar power to protect and preserve the environment; and
2. Coordinate a bi‐weekly meeting between BC3 and the Installer.
3. **Installer Commitments and Deliverables**

Installer agrees to meet the following terms and conditions for the duration of the Program outlined in Exhibit A, entitled Program Description and Scope of Work, which, together with any other Exhibits to this Agreement, is incorporated herein by reference.

Installer acknowledges that Program Participants shall participate in the Program in their individual and personal capacities and that neither BC3 nor the Participating Organizations shall provide any endorsement or other recommendation or warranty of Installer or Installer’s services. BC3 does not recommend or endorse any commercial products, processes, or services and its entering into this Agreement shall not be construed or interpreted as an endorsement or recommendation or warranty.

Installer further acknowledges that, in entering into this Agreement, BC3 does not make any representations or guaranties regarding the number of Program Participants, the number of installations that Installer will be contracted to perform in connection with the Program, the number of Program Participants who will elect to enter into a separate agreement with Installer, the amount of any revenue to be earned by Installer in connection with the Program, or the number of additional individuals or entities that BC3 may contract with to provide solar PV installation services in connection with the Program. Installer acknowledges that it will not be the exclusive provider of solar PV installation in connection with the Program and/or in the Program Area and BC3 may contract, in its sole discretion, with additional individuals or entities to provide such services in connection with the Program and/or in the Program Area, including during the term of this Agreement.

Installer further acknowledges that the purposes of the Program are to increase solar adoption to ultimately reduce greenhouse gas emissions and protect and preserve the environment. Installer agrees to support the activities of BC3 to educate the Community and Program Participants about the benefits of solar to reduce greenhouse gas emissions and protect the environment. BC3 may take such other actions with respect to the Program to further these purposes as it deems appropriate or necessary in its sole discretion, provided they are not in violation of the terms of this Agreement. Should BC3 determine, in its sole discretion, that any actions by Installer in connection with the Program or its performance hereunder could jeopardize Community Initiatives’ legal or tax-exempt status or otherwise cause it harm, it reserves the right to take such action as it deems appropriate to remedy such actions, including, but not limited to, the immediate termination of this Agreement.

Installer shall comply with all applicable laws, regulations, rules, codes and ordinances in connection

with its work in the Program. BC3 and Installer agree and acknowledge that the participating

homeowners will be offered comparable terms and conditions, including, but not limited to, with respect to the PV systems and any terms regarding a related cash sale, third party ownership option including monthly lease, pre-paid lease, or power purchase agreement, performance guaranty, and installation contracts, as are, or would be, regularly offered to other customers of Installer with respect to such PV system products; provided that pricing of materials, labor, and maintenance shall be applied as described in the Pricing Proposal (“Exhibit C”).

1. **Term and Termination**
	1. Either Party may terminate this Agreement upon written notice to the other Party if the non-terminating Party is in material breach of the Agreement, which remains uncured for thirty (30) days after written notice of such breach.
	2. BC3 may also terminate this Agreement immediately in the event that (a) it determines, in its sole discretion, that any actions or conduct of Installer in connection with the Program or its performance hereunder could jeopardize Community Initiatives’ legal or tax-exempt status or otherwise cause it harm or (b) Installer fails to maintain such licenses or comply with applicable laws, regulations, rules, codes, or ordinances necessary for it to perform hereunder.
	3. The term of this Agreement shall commence on the Effective Date and will end on the earlier of twelve (12) months after the Effective Date or such earlier date of termination should this Agreement be earlier terminated as provided in this Section (“Termination”). Sections 5.a, b, g, h, and j shall survive any expiration or termination of this Agreement. In the event of expiration or termination of this Agreement, upon BC3’s written request, Installer shall deliver to BC3 copies of records of all homeowner Program data including project locations, installed system sizes (kilowatts), and estimated energy savings generated through site evaluation reports to date under this Agreement.
	4. Upon termination or expiration of this Agreement for any reason, the limited license set forth in Section 2.a. of this Agreement shall be immediately terminated. Upon such termination or expiration, Installer shall immediately cease using any of the BC3 or SunShares intellectual property or logos and shall return any materials referencing such BC3 intellectual property or logos, as well as any materials related to the Program provided to Installer by BC3, to BC3 within [14] days of such termination or expiration. Notwithstanding the foregoing, if Installer has entered into a separate contract with a Program Participant for the installation of a solar system prior to the termination or expiration of this Agreement, Installer may continue to perform its obligations under such contract to the point of completion. Upon termination or expiration of this Agreement, Installer shall no longer be eligible to enter into any further contracts in connection with the Program.
2. **Additional Legal Terms and Conditions**
	1. INDEMNIFICATION. To the fullest extent allowed by law, the Installer shall indemnify, defend, and hold harmless Community Initiatives, acting here through its internal BC3 program, and its officers, directors, members, managers, employees, volunteers, attorneys, agents, representatives, successors, and permitted assigns (collectively, “CI Covered Persons”) from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards related to or arising out of the Program (collectively, "Damages") sustained, incurred or suffered by or imposed upon any CI Covered Person resulting from any third party claim alleging (i) any act or omission that would constitute a breach of any of the terms of this Agreement or any false representation by the Installer, or (ii) any negligent acts or omissions or reckless or intentional misconduct of the Installer, and/or its officers, directors, members, managers, employees, volunteers, attorneys, agents, and/or representatives (collectively, “Installer Covered Persons”). If Community Initiatives seeks indemnification pursuant to this Section, it shall provide detailed written notice to Installer promptly after learning of the claim, but the failure to so notify Installer shall not relieve Installer of any liability except to the extent it is materially and actually prejudiced by any delay in such notice. Installer shall assume, at its sole cost and expense, the defense of any claims asserting or seeking Damages with counsel reasonably satisfactory to Community Initiatives; provided, however, that Community Initiatives shall have the right to assume control of the defense and settlement of the claim in its discretion, and Installer shall provide reasonable assistance at Installer’s reasonable expense. Community Initiatives shall not be subject to any liability for any settlement made without its consent. Installer shall not, without Community Initiative’s consent, effect any settlement or discharge or consent to the entry of any judgment.
	2. **LIMITATION OF LIABILITY. EXCEPT FOR EACH PARTY’S INDEMNITY OBLIGATIONS UNDER SECTION 5.a OF THIS AGREEMENT AND ANY LIABILITY ARISING FROM A PARTY’S BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY’S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR PERFORMANCE HEREUNDER EXCEED THREE HUNDRED THOUSAND DOLLARS ($300,000).**
	3. USE OF SUBCONTRACTORS. Subject to the term of any contract that Installer enters into with Program Participants, Installer may engage subcontractors and other persons to perform work in the Program in its sole discretion. All persons engaged by Installer shall be under the direction, supervision, and control of Installer, and shall be appropriately licensed, skilled and experienced to perform that portion of the Program work assigned to them. If licenses or certifications are required for the work to be performed, the Installer should ensure that the subcontractors will have the required skills, licenses, certifications, and/or background to do the work. As between Installer and BC3, Installer shall be solely responsible for selecting and directing the work of any qualified subcontractors and for any compensation due to subcontractors. BC3 assumes no responsibility whatsoever concerning such compensation, selection, or supervision.
	4. STATUS AS INDEPENDENT CONTRACTORS. It is the express intention of the Installer and BC3 that the relationship between the Installer and BC3 is that of independent contractors. Nothing in this Agreement shall in any way be deemed or construed to constitute either party as a representative or agent of the other or to create any relationship of agency, partnership, or joint venture between the parties hereto, and Installer shall make no such representation to anyone. In entering into this Agreement, BC3 does not assume any liability or responsibility for the actions of Installer, including those related to performance under this Agreement.
	5. COMPLIANCE WITH LAW. Installer agrees to comply with all applicable Federal, State, and local statutes, rules, and regulations, including but not limited to, those related to promoting fair employment practices or prohibiting employment discrimination and unfair labor practices, and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, or for exercising any rights afforded by law.
	6. INSURANCE. Installer shall, at Installer’s sole cost and expense, maintain for the duration of its performance of services in connection with the Program, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services in connection with the Program, by Installer and/or its agents, representatives, employees or subcontractors, and Worker’s Compensation coverage in such amounts as are required by law, as well as Employer’s Liability, General Commercial Liability, and Errors and Omissions coverage in such amounts as outlined in the attached Community Initiatives BC3 Addendum A Insurance requirements. Evidence of coverage shall be provided as outlined in the addendum.
	7. CONFIDENTIALITY. Each Party agrees that all data, documents, discussions or other information developed by or received from the other Party or received in connection with the Program are confidential and owned by the respective Party developing or providing such, and must not be disclosed by the receiving Party to any person except as authorized by this Agreement or by the other Party, or as required by law. During and after the term of this Agreement, each Party agrees that it shall not use (except in its performance of work under the Program), divulge, disclose or communicate to any third party, such confidential information without the prior written consent of the other Party. Each Party may disclose such confidential information to its employees or representatives who need to know such confidential information to perform the work under the Program, provided that such Party shall ensure that those who have access to the confidential information have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein, prior to any disclosure of confidential information to such persons. Each Party shall be liable for any damages caused to the other Party by any breach of these confidentiality provisions or misuse of confidential information, including by any of its employees, agents, or representatives. Each Party shall use at least the same degree of care, but no less than a reasonable level of care, and shall take at least those measures that it takes to protect its own most highly confidential information to protect the secrecy of and avoid disclosure and unauthorized use of the confidential information disclosed by the other Party. Each Party shall promptly notify the other Party of any subpoena or other third party request to disclose such confidential information, so that the other Party, at its sole cost and expense, may seek an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the confidential information, and each Party shall cooperate with any such effort by the other Party. In any event, whenever so required, each Party shall furnish, upon the advice of its counsel, only that portion of such confidential information that is legally required to be furnished. All confidential information shall be promptly returned to the respective Party on request and upon termination or expiration of this Agreement.
	8. INSTALLER REPRESENTATIONS AND WARRANTIES. Installer represents and warrants that: (a) it is in good standing in its jurisdiction of formation or organization, and in the Program Area, and has all licenses necessary to perform its work in the Program and hereunder; (b) it has full authority to enter into this Agreement; (c) this Agreement is a valid, legally binding and enforceable agreement; (d) there are no prior commitments or other obligations that prevent Installer from fully performing all of its obligations under this Agreement; (e) Installer’s work under and pursuant to this Agreement shall be performed in a good and workmanlike manner consistent with prevailing industry standards by competent and qualified personnel; and (f) neither Installer nor any of its representatives has given to or received from BC3 or its representatives any commission, fee, rebate, kickback, gift or entertainment of value in connection with entering into this Agreement, excluding any fees to be paid between the Parties pursuant to this Agreement, or entered into any other illegal or unethical business arrangement with BC3 or its representatives.
	9. RECORD KEEPING. Installer shall maintain such ledgers and other documents relating to all Program-related installations and activities, including customer contact information, address, and date of project completion as is normal practice for it in accordance with its typical business practices in connection with other installations. Installer shall provide such records and data to BC3 every seven (7) calendar days throughout the term of the Agreement. The data to be provided by Installer to BC3 shall also include the number of kilowatts installed, the energy saved (kWh), and any other data resulting from customer site evaluations/quotes for the purpose of Program tracking and implementation reporting. Such data shall enable BC3 to track the number of solar installations and the amount of energy saved in connection with the Program for the purpose of measuring Program impact in connection with the BC3’s exempt purposes of reducing greenhouse gas emissions and protecting and preserving the environment.
	10. WAIVER AND RELEASE. Notwithstanding anything herein, BC3 shall have no responsibility for the contracts between Installer and homeowners participating in the Program. For the avoidance of doubt, BC3 shall not be liable for any actions, inactions, or omissions of the participating homeowners or Installer under such contracts and shall not have any rights or obligations thereunder. NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS OF SERVICE FOR A PARTICULAR PURPOSE OR THE SUCCESS OF SUCH PARTY’S EFFORTS HEREUNDER.
	11. FEES. In order to compensate BC3 for its services in connection with administering the Program and to promote the Program’s goal of installing as many watts of solar power in the Program Area as possible in order to reduce greenhouse gas emissions and protect the environment, Installer agrees to pay $0.15 per watt (based on the DC nameplate of the system installed) for each photovoltaic system completed and installed on a Program Participant’s home through the Program. All payments shall be made following the completion of the equipment installation, not after Installer receives permission to operate from the local utility on a monthly basis, covering all installations completed during that month. Within thirty (30) days of receipt of invoice, Installer shall pay all fees on such invoices. Installer acknowledges that Program installations shall be complete prior to the end of **Summer 2021** unless such Program installations are extended per the terms of any agreement or contract between a homeowner and Installer. It is understood and agreed that the fees to be paid under this Agreement are gross fees and the Installer shall not be required to withhold or pay any federal, state or local income taxes, social security taxes, disability or unemployment insurance, or similar payroll taxes in connection with such fees. BC3 shall be responsible for any and all applicable taxes incurred as a result of fees paid by Installer to BC3 pursuant to this Agreement. Installer shall issue a Form 1099 to BC3 for compensation paid under this Agreement if required by law.
	12. INCENTIVES. Installer shall provide a $XX incentive to each Program Participant that signs a contract and has a PV system installed on his or her home by Installer, pursuant to certain terms and conditions between Installer and the Program Participant and Exhibit C. Should the Program Participant refer another homeowner to the Installer and that Program Participant then signs a contract, the Installer with provide both Program Participants with an additional $XX incentive. Installer shall have no obligation to provide an incentive or promotion to a Program Participant other than that described in this section, notwithstanding anything to the contrary in this Agreement, whether in Section 3 or otherwise.
	13. COSTS AND EXPENSES. Except as otherwise set forth herein, each Party shall bear and be responsible for its own costs, fees, and expenses in preparing or performing under this Agreement.
	14. NOTICES. All notices and other communications required or permitted to be given to BC3 under this Agreement must be in writing and must be emailed to BC3’s email contact of record sunshares@bc3sfbay.org. Notices and other communications to either Party may also be personally served, mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective Parties as follows:

|  |  |
| --- | --- |
| To: Business Council on Climate Change | Christina Armor1455 Market Street, Suite 1200San Francisco, CA 94121 |
|  |  |
|  |  |
| To: Installer  | [insert name here] [insert title here] [insert organization here][insert address here] |

Notice will be effective on the date personally delivered, the date delivered by email, or, if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties may change their respective addresses by providing written notice to the other Party.

* 1. SEVERABILITY. Should a court of competent jurisdiction hold any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected, unless, in the opinion of a court of competent jurisdiction, an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
	2. INTEGRATION/INTERPRETATION. This Agreement, together with any Exhibits hereto, constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the Program, and supersedes all prior and contemporaneous discussions, understandings or agreements of the parties. No Party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by both Parties. This Agreement shall not be construed against any party by virtue of the drafting or preparation hereof. This Agreement shall not be construed to confer rights upon any third party. Headings in this Agreement are for convenience only, and shall not be used to interpret this Agreement.
	3. FORCE MAJEURE. If any Party fails to perform its obligations hereunder because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that Party's performance (except for the payment of money) shall be excused.
	4. ASSIGNMENT. Installer shall not assign or in any way transfer this Agreement, including its rights and obligations hereunder, without the prior written consent of BC3.
	5. LEGAL PROCEEDINGS. If there is any claim or controversy regarding the rights and obligations of the Parties hereunder, the Parties shall first meet and confer ("Initial Meeting") in a good faith effort to settle and resolve their differences. Any controversy or claim arising out of or relating to this Agreement not settled by such Initial Meeting shall be settled by binding arbitration in San Francisco, California, U.S., in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The Parties understand and agree that in signing this agreement they are giving up their right to a civil trial in a court of law with respect to any dispute arising hereunder.
	6. FURTHER ASSURANCES. Each Party shall, at the reasonable request of the other Party, execute and deliver to the other such instruments and documents and shall take such actions as may be reasonably requested to more effectively carry out the terms of this Agreement.
	7. NO WAIVER. Each Party agrees that the other Party’s waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision.
	8. AMENDMENTS, ENTIRE AGREEMENT, AND EXHIBITS. All conditions, covenants, duties and obligations contained in this Agreement may be amended only through a written amendment signed by the Parties. The Parties understand and agree that this Agreement supersedes all other verbal and written agreements and negotiations by the Parties regarding the Program set forth herein.
	9. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

BC3 is excited to increase solar adoption within the Program Area in order to reduce greenhouse gas emissions and protect and preserve the environment. If you accept the terms and conditions referenced herein, please have an authorized individual sign on behalf of Installer.

Sincerely,

Christina Armor

Program Director

Community Initiatives

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledged by:

Business Council on Climate Change, a program of Community Initiatives

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Accepted & Agreed to by:

[Installer Company]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_