POWER PURCHASE AGREEMENT

by and between

[PROVIDER]

and

DISTRICT NAME

dated

__________, 2022

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**Agreement**" or "**PPA**") is made and entered into as of this ___ day of ________, 2022, ("**Effective Date**"), between [PROVIDER] ("**Provider**"), and the ~~CLIENT NAME~~ ("**District**"). District and Provider are collectively referred to herein as "**Parties**" and individually as "**Party.**"

RECITALS

WHEREAS, Provider is in the business of installing and operating solar photovoltaic facilities and selling electric energy generated from such facilities;

WHEREAS, Government Code section 4217.10 *et seq.* provides that public agencies may enter into agreements, including but not limited to, lease agreements, for real property upon which alternative energy facilities may be constructed so that the public agency may purchase the energy generated from the facilities constructed on the real property under a power purchase agreement; and

WHEREAS, the governing body of District has made those findings required by Section 4217.12 of the Government Code that: (i) the anticipated cost to District for electrical energy services provided by the solar photovoltaic system under this Agreement will be less than the anticipated marginal cost to District of electrical energy that would have been consumed by District in the absence of those purchases and (ii) the difference, if any, between the fair market value of the right to access and occupy the real property subject to this Agreement and related payments under this Agreement, if any, is anticipated to be offset by below-market energy purchases or other benefits provided under this Agreement; and

WHEREAS, District desires to reduce its energy costs as well as its dependence on fossil fuel electric generating resources and to promote the generation and storage of electricity from solar photovoltaic facilities; and

WHEREAS, Provider desires to design, install, own, maintain, and operate a solar photovoltaic including all solar photovoltaic panels and equipment components of the solar photovoltaic system (a "**Solar Facility**") on the real property (the "**Site**") owned by the District, and Provider shall sell the output from the Solar Facility to District at those rates set forth herein (collectively the "**Project**"); and

WHEREAS, Provider has developed an ownership and financing structure for the System, which facilitates the use of certain tax incentives, and accelerated depreciation to reduce the expected investment returns of its investors, and which benefits District by offering a competitive Power Price, as defined herein; and

WHEREAS, District desires to provide Provider an easement for the sole purpose of accessing District's property to install, operate, maintain and repair the System; and

WHEREAS, as part of this PPA and in consideration of the easement, Provider and District intend that Provider would obtain title, an ownership interest, and retain all financial incentives and tax benefits generated by the System and associated with the development of the System, including the installation, ownership and operation of the System and the sale of energy and services from the System to District.

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Provider and District hereby agree as follows:

AGREEMENT

1. Definitions.

Capitalized terms used in this Agreement shall have the meanings ascribed to them herein or in the attached Exhibit A.

2. Term.

A. Term. The Term of this Agreement shall commence upon the Effective Date and terminate automatically on the Expiration Date ("**Initial Term**"), unless terminated earlier as provided herein. District may renew this Agreement for up to two (2) five-year renewal terms ("**Renewal Term**"). The Initial Term and all subsequent Renewal Terms are referred to collectively as "**Term.**" This Agreement shall terminate automatically and concurrently with any termination of the Site easement provided by this Agreement.

3. Removal of System.

A. Removal of System. Within one hundred eighty (180) Days of the expiration or any termination of this Agreement (unless District has: (i) purchased the System under the terms of this Agreement, including, without limitation, all applicable requirements under Article 5, below; or (ii) otherwise consented in writing to allowing the System to remain installed on the Site), Provider shall, in coordination with District and at Provider's sole cost and expense, remove the System from the Site. Provider shall bear the cost of any required storage of the System, if necessary, during Provider's removal of the System.

B. Removal and Site Restoration. Removal of the System shall include all installed equipment, including, but not limited to, the System and all tangible and structural support materials, as well as all appurtenant equipment, above and below ground (except for empty conduits). Provider shall additionally restore the Site to a condition substantially similar to the pre-installation condition of the Site, excluding ordinary wear and tear, through reasonable efforts. Provider's restoration of the Site shall include, but is not limited to, any refinishing, landscaping, hardscaping, painting or other finish work, and cleaning. Provider shall undertake any repairs necessary as a result of such removal and restoration. The Parties shall reasonably coordinate all such removal, restoration, storage and transportation activities and dates.

C. Failure to Remove. If Provider fails to comply with this Section 3 and remove the System and restore the Site as required within such one-hundred and eighty (180) day period, District shall have the right, but not the obligation, to remove the System and restore the Site and charge Provider for the cost incurred by District, which cost shall include a twenty percent (20%) administrative fee. The Parties shall reasonably coordinate all such removal and pick-up activities. In the event that the Provider does not remove the System as specified herein, District shall also have the option of continuing to receive Output from the Solar Facility at no cost to District, including, without limitation, no obligation to compensate Provider for the Power Price or other consideration, until the System is removed by either Provider or District. This Section shall not be interpreted to limit District's other available lawful remedies.

4. Purchase and Sale of Output.

A. Purchase and Sale of Output. Beginning on the Commercial Operation Date and through the remainder of the Term, Provider agrees to sell and District agrees to buy all Output from the Solar Facility at the applicable Power Price as set forth in Exhibit B. District shall have no obligation to pay for Output delivered from the Solar Facility after the expiration date of this Agreement or the early termination thereof.

B. Cost Reimbursement. The Parties acknowledge that District will incur costs associated with this Project including amounts payable by District to third-party engineers, consultants, legal counsel, and inspectors ("**Development Costs**"). The Power Price set forth in Exhibit B includes consideration for reimbursement of Development Costs in the amount of $XXX,XXX which shall be paid by Provider to District based on the following schedule:

Commented [AJ1]: What is this cost?

1) 50% of the Development Costs within 15 days of the Effective Date of this Agreement (the "**Effective Date Milestone**");

2) 25% of the Development Costs within 15 days of the date on which District issues Provider a Notice to Proceed (the "**NTP to Construction Milestone**"); and

3) 25% of the Development Costs within 15 days of the Commercial Operation Date (the "**COD Milestone**").

C. Adjustment to Power Price. The Parties acknowledge that the Power Price set forth in Exhibit B is based on assumptions by Provider regarding the items outlined below. The Provider shall be solely responsible for ensuring compliance with applicable legal requirements of all Federal Investment Tax Credit (**"ITC"**) incentives necessary to achieve their assumed ITC rate. Provider assumes the risk that Provider may not achieve their assumed ITC incentive rate. Notwithstanding the foregoing, the Parties acknowledge that the Power Price shall be adjusted, if (and only if) the assumptions provided in this Section 4(C) are inaccurate, as follows:

1) Distribution Utility Upgrades Adder: Provider assumed that the total cost to be paid to the Distribution Utility in connection with the Distribution Utility Upgrades would be $XXX,XXX. If the actual cost reasonably incurred by Provider for Distribution Utility Upgrades exceeds $XXX,XXX, then a proportionate increase of the Power Price in an amount of $X.XXX/kWh for each additional $10,000

increase in cost will be required. Provider will notify the District of the actual Distribution Utility Upgrade costs within five (5) Days of receipt from the Distribution Utility, and in all cases, prior to District acceptance of any such changes as contemplated under Sections 6(A) or satisfaction of the District's Conditions Precedent under Section 6(B). If the Power Price increases in an amount in excess of $X.XXX/kWh ("**Distribution Utility Upgrade Cap**") as a result of Distribution Utility Upgrades the Parties will engage in good faith negotiations to adjust the Power Price or System specifications to accommodate the actual Distribution Utility Upgrade costs for a period of thirty (30) days after Provider provides such notice. If the Parties, in good faith, fail to reach agreement on an amendment to this Agreement regarding such adjustments within a thirty (30) day period, Provider may (i) terminate this Agreement which termination shall not comprise a default under this Agreement, nor shall such termination result in any further liability to either Party including, without limitation, any default provision which would otherwise require payment of the Termination Value; or (ii) elect to proceed with the Power Price equal to the Distribution Utility Upgrade Cap. If the actual cost reasonably incurred by Provider for Distribution Utility Upgrades is less than $XXX,XXX, District shall be entitled to a proportionate decrease of the Power Price in an amount of $X.XXX/kWh per $10,000 decrease in cost. Provider shall work diligently with District to minimize the costs for Distribution Utility Upgrades at all points of the Project.

2) District Equipment Adder. Provider assumed that the total cost to Provider for District owned equipment upgrades would be $XXX,XXX ("Assumed District Upgrade Costs"). If the actual costs incurred by Provider for District owned equipment upgrade costs ("**District Upgrade Costs**") exceeds the Assumed District Upgrade Costs, then a proportionate increase to the Power price in an amount of $X.XXX/kWh for each additional $10,000 increase in cost will be required. Provider will notify District of the actual District Upgrade Costs within five (5) Days of receipt of a firm bid for such costs, and in all cases, prior to District acceptance of any such changes as contemplated under Sections 6(A) or satisfaction of the District's Conditions Precedent under Section 6(B). If the Power Price increases in an amount in excess of $X.XXX/kWh ("**District Upgrade Costs Cap**") as a result of District Upgrade Costs, the Parties will engage in good faith negotiations to adjust the Power Price or System specifications to accommodate the actual District equipment upgrade requirement costs for a period of thirty (30) days after Provider provides such notice. If the Parties, in good faith, fail to reach agreement on an amendment to this Agreement regarding such adjustments within a thirty (30) day period, Provider may (i) terminate this Agreement which termination shall not comprise a default under this Agreement, nor shall such termination result in any further liability to either Party including, without limitation, any default provision which would otherwise require payment of the Termination Value; or (ii) elect to proceed with the Power Price equal to the District Equipment Upgrade Requirements Cap. Provider shall work diligently with District to minimize the costs for District Upgrade Costs at all points of the Project.

3) Solar Facility Federal Investment Tax Credit Domestic Content Adder. Within two (2) months of the applicable Governmental Authority issuing final guidance regarding the eligibility requirements for the ITC 10% adder related to meeting domestic content requirements ("**Solar Facility ITC Domestic Content Adder**"), Provider shall provide District with their determination on the Project eligibility. If the Project is eligible for the Solar Facility ITC Domestic Content Adder, District shall be entitled to a decrease of the Power Price by $X.XXX/kWh for each additional $XXX,XXX increase in the net benefit to the Project of the Solar Facility ITC Domestic Content Adder, taking into account any additional work, requirements, or costs incurred by Provider in qualifying for the Solar Facility ITC Domestic Content Adder. Provider shall pursue the Solar Facility ITC Domestic Content Adder diligently in good faith; provided, however, Provider shall not be required to pursue the Solar Facility ITC Domestic Content Adder if Provider reasonably determines that the Solar Facility ITC Domestic Content Adder will provide no or marginal net benefit to the Project. If an additional EPC cost to Provider is identified, then Provider shall provide written confirmation of the additional EPC cost and the resulting impact to the Power Price.

4) Solar Facility Federal Investment Tax Credit Low Income Adder. Within two (2) months of the applicable Governmental Authority issuing final guidance regarding the eligibility requirements for the ITC 10% adder related to meeting the low-income siting requirements, ("**Solar Facility ITC Low Income Adder**"), Provider shall apply to the applicable Governmental Authority for determination on Project eligibility. Within one (1) month of response from the applicable Governmental Authority, Provider shall notify the District in writing of the Project eligibility for the Solar Facility ITC Low Income Adder. If the Project is eligible for the Solar Facility ITC Low Income Adder, District shall be entitled to a decrease of the Power Price by $X.XXX/kWh. Provider shall pursue the Solar Facility ITC Low Income Adder diligently in good faith.

D. Provider's Solar Facility Output Guarantee. Commencing with the first (1st) Contract Year after the Commercial Operation Date of the System, and for each Contract Year thereafter during the Initial Term, the aggregate metered Output from the Solar Facility for the previous Contract Year (the "**Measurement Period**") shall be at least ninety~~ five~~ percent (~~95~~90%) of the Annual Production Estimate for such Measurement Period for the Solar Facility as defined in Exhibit B ("**Output Guarantee**"); provided, the Output Guarantee for any Measurement Period will be reduced by the estimated generation of the Solar Facility that would have been generated during such Measurement Period, but was not generated, due to one or more of the following causes: (i) an Outage; (ii) the actions or omissions of the Distribution Utility or the request or direction of the Distribution Utility; (iii) a Force Majeure event including extreme weather conditions; (iv) buildings or structures constructed after the Commercial Operation Date overshadowing or otherwise blocking access or sunlight to the Solar Facility on or at the Site; or (v) a breach of this Agreement by District; or (vi) maintenance of solar plant subject to 15 days in a year.

If the Output delivered by the Solar Facility during any Measurement Period does not equal or exceed the Output Guarantee for such Measurement Period, Provider shall include in its next invoice to District (and in the final invoice for any credit owed for the final Contract Year) a credit for the Energy Shortfall Amount at the PPA rate. Alternatively, District has the option to request that the Energy Shortfall Amount be paid by check independently of an invoice.

E. REMOVED.

F. Resale of Output. If at any time during the term of this Agreement, the District reduces its consumption requirements for Output and is unable to off take 100% of the electricity generated by any Solar Power Plant, when it is capable of being generated, then Deemed Generation will apply on that Solar Power Plant. Moreover, if any part of the capacity of a Solar Power Plant is unable to operate at full capacity due to non availability of load, Deemed Generation shall also apply to that Solar Power Plant for that day. ~~or District otherwise determines that the Distribution Utility or any other purchaser is willing to purchase Output from the System, District, at its option, may sell Output to the Distribution Utility or any other purchaser. If applicable and required by law, District may also request that Provider enter into negotiations with District to pursue a third-party sale agreement. Upon such request, Provider and District shall negotiate in good faith regarding the terms and conditions of the third-party sale agreemen~~t.

G. Net Metering, Credits and Storage of Output. Nothing in this Agreement shall limit District's ability during the term of this Agreement to participate in or otherwise take advantage of any current or future program or technology which may enable District to store Output at any Site or to export Output to any other site or to the Distribution Utility for any available energy credits, offsets, or revenue. District will give reasonable notice to Provider of its intention to undertake any such project or program and will coordinate with the Provider to ensure that the System, the terms and conditions of this Agreement and all associated warranties are reasonably preserved.

H. REMOVED.

I. Outages. Provider may suspend delivery of Output as reasonably necessary for testing, maintaining, replacing and repairing the System, or in response to any Distribution Utility directive or dispatch order (an "**Outage**") subject to 15 days in a year. Provider shall take all steps necessary to minimize the duration and scope of any such Outage. In the event that an Outage is caused beyond 15 days in a year or prolonged by Provider's negligent act or omission, Provider shall compensate District for the difference between the total electricity cost to the District for the applicable period of outage caused or prolonged by Provider's negligent act or omission and the Power Price for each 15 minute interval that the Power Price is less than the electricity cost to the District. In such event, District shall provide Provider with evidence of the pricing for such applicable periods in the form of Distribution Utility bills during the outage period of the pricing for such applicable periods, and Provider shall provide the calculation and supporting documentation for determining these amounts, to the reasonable satisfaction of District. Except as set forth herein, District waives claims related to District's costs of purchasing energy to replace what would have been produced by the System but for such Outages, along within any associated net metering, or similar, benefits.

If an Outage occurs under this Section and a payment is due from Provider to District, Provider shall include in its next invoice(s) to District (and in the final invoice for any credit owed for the final Contract Year) a credit for the difference between the electricity cost to the District for the applicable period.

J. Distribution Utility Electric Service. District may take parallel energy services from Distribution Utility.

5. Design, Construction, Operation & Maintenance.

A. All Provisions in this Article 5 shall apply to all activities of Provider undertaken in relation to the design, construction, installation, maintenance, repair, and operation of the System(s) throughout the Term of this Agreement.

B. Provider's Contractor and Consultants. Provider shall ensure that any party contracting with Provider for any engineering, procurement, design, installation or construction of the System shall possess sufficient knowledge, experience, expertise, licensing, registration, and financial capacity and creditworthiness necessary for satisfactory completion of Provider's obligations under this Agreement. The contractor performing the construction work on the Project shall possess a Class B and C-10 California Contractor State License, be a registered public works contractor in accordance pursuant to Labor Code Section 1725.5, and all other required licenses for performing work under this Agreement, prior to performing any work on the Project. Provider represents and warrants that it has the financial capacity, creditworthiness and bonding sufficient to satisfy all of Provider's obligations under this Agreement, including, but not limited to, any instance of default or other failure by Provider's contractor(s) to complete the work required to satisfy Provider's obligations in this Agreement. Prior to contracting with any such party, Provider shall obtain and review the qualification of such party and complete any necessary background check or fingerprinting required by law or District. Provider shall further procure from the contractor performance and payment bonds and any other assurances as Provider deems reasonably necessary to secure contractor's timely completion of the Project.

C. Permits. Provider shall be solely responsible for ensuring that the System is constructed in compliance with all applicable laws, regulations and Permits, and in accordance with the standards set by any governmental program providing funding for the System, including, but not limited to, all permits and approvals required by the Division of the State Architect ("DSA") in any way related to the design, installation, construction and operation of the Systems, including but not limited to any exterior improvements and/or exterior upgrades the DSA may require of the Provider in order for the Systems to comply the Field Act (Education Code §§17280-17317) and American with Disabilities Act ("ADA"). Provider shall fully include and incorporate into any and all designs and engineering for the System, all improvements, conditions and mitigation measures required for compliance with the California Environmental Quality Act ("**CEQA**"). Provider shall, at Provider's sole cost and expense, obtain from all Governmental Authorities having jurisdiction over the Project, all necessary Governmental Approvals and other Permits and approvals required for the installation, operation and maintenance of the System, including, but not limited to fire safety, California Occupational Safety and Health Administration

("**Cal/OSHA**"), utility interconnection, right-of-way permits, easement agreements and other related requirements.

To the extent action is required by District, District shall, upon the request of Provider, use reasonable efforts to assist Provider in obtaining and retaining Permits, licenses, releases and other approvals necessary for the design, construction, engineering, installation, operation and maintenance of the System. Provider shall reimburse District for costs reasonably incurred by District in assisting the Provider under this Section. Provider shall be responsible for all costs, expenses and improvements to the extent required to obtain or comply with any permits, Government Approvals or other requirement under state or federal law made necessary as a result of the System installation, operation and maintenance. Specifically, the Provider is required to obtain and submit all documents to close out the Project with the Governmental Authorities having jurisdiction over the Project. In addition to stamped and approved plans, Provider shall provide any required installation compliance confirmation letter(s) to any applicable Governmental Authorities.

D. Inspections. Provider and District shall work together reasonably to mutually select any company that performs inspections of the materials and equipment for the design, engineering, procurement, construction or installation of the Systems, including, but not limited to, any inspections to verify the Systems' compliance with the Applicable Law.

1) Division of State Architect Inspections. Provider shall have the right to approve all inspection companies, including the inspector of record, required in connection with the approval of the Systems by The Division of State Architect (the "DSA"), which approval shall not unreasonably be withheld. Where required, District shall contract directly with DSA inspectors but Provider shall be responsible for reimbursing the District for District's payments under any such contract. The rights and obligations of District and Provider under this Section 5.2(a) shall be subject to the following guidelines:

2) When required to contract directly with DSA inspectors, District shall use an agreement approved by Provider in its reasonable discretion; provided that at a minimum such agreement shall include, where requested by Provider, provisions granting Provider the right to (a) coordinate with and participate in the management of the entire scope of services to be performed by such inspector, (b) communicate directly with such inspectors and, where necessary, (c) direct the inspector pursuant to such agreement to the extent required by law; and

3) District shall fully cooperate with Provider to complete and submit all paperwork and forms required for DSA approval.

E. Notice of Output Interruptions. Each Party shall notify the other Party as soon as reasonably practicable following its discovery of any material malfunction of any System or interruption in the supply of electricity from any System. Each Party shall designate and advise the other Party of personnel to be notified in the event of such a malfunction or interruption. Provider shall correct, or cause to be corrected, the conditions that caused the malfunction or interruption as soon as reasonably practicable. However, in no event shall Provider's response to

investigate the problem and initiate appropriate corrective action be greater than forty-eight (48) hours following receipt of notice or upon discovery of such malfunction or interruption. In addition, Provider shall remotely monitor the System on a daily basis for the presence of alarm conditions and general performance utilizing the data acquisition systems and monitoring systems installed by the Provider at the Site, as described in Exhibit G.

F. Site Operations. In order to prevent any unreasonable disturbance or interruption of District activities, Provider shall accommodate the District's normal operations schedule and scope of activities conducted on the Site during construction and on-going operation of the System pursuant to this Agreement.

G. Operation and Maintenance of System. Provider shall be responsible for all operations, maintenance, and repair of the System, except to the extent that any maintenance or repair is made necessary by the sole or active negligent acts or omissions or willful misconduct of District. All maintenance, repairs and operations, shall be conducted in the manner set forth in this Agreement, and Provider shall reasonably accommodate and cooperate with District to ensure the District's activities, facility uses, and scheduling requirements are not unreasonably impeded. Provider's repair work responsibilities shall include, but are not limited to, any repair required as a result of damage caused by the Provider or its contractors, subcontractors or vendors, to the District's facilities within a period of five (5) years following the date the damage was discovered or reasonably should have been discovered by the District. Provider is responsible for repairs and/or replacement of system components that are damaged from vandalism, theft or criminal activity.

H. Prevailing Wages. This Project is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at District's main office or may be obtained online at http//www.dir.ca.gov/dlsr. A copy of these rates shall be posted at the job site by Provider. Provider and all contractors and subcontractor(s) under it, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of this PPA and the employment of apprentices. Provider hereby agrees to indemnify and hold harmless District, their officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, their officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with any applicable Labor Code provisions arising out of or in connection with the Project.

1) Wages.

a. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

b. Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term "per diem wages" is used herein.

c. Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.

d. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

e. Each worker in work on the System on District's Property shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between Provider, or any subcontractors of Provider, and such workers.

f. Provider shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Provider.

g. Any worker employed to perform work on the System which is not covered by any classification available in the District office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

2) Record of Wages Paid: Inspection. Pursuant to Labor Code § 1776, Provider stipulates to the following:

a. Provider and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that

are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.

b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Provider, or Provider's subcontractors, on the following basis:

c. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.

d. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of the District, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.

e. A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Provider, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Provider or Provider's subcontractors.

f. Provider shall file, or caused to be filed, a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

g. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Provider or subcontractors performing the work shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

h. Provider shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

i. In the event of noncompliance with the requirements of this Section, Provider shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Provider must comply with this Section. Should noncompliance still be evident after such 10-day period, Provider shall pay a penalty in the amount prescribed by statute to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

j. The responsibility for compliance with this Section shall rest upon Provider.

3) Hours of Work.

a. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Provider stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Provider or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed on the District's Property by employees or subcontractors of Provider in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

b. Provider shall pay to the District a penalty in the amount prescribed by statute for each worker employed in the execution of these Construction Provisions by Provider or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by Provider is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

c. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

d. Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of Provider and in compliance with applicable ordinances.

4) Apprentices.

a. All apprentices employed by Provider to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

b. When Provider to whom the work under these Construction Provisions is awarded by the District or any Subcontractor under Provider, in performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, Provider and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving Provider or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Provider or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

c. "Apprenticeable craft or trade" as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

d. Provider, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other Providers in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Provider employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other Providers do, but where the trust fund administrators are unable to accept the funds, Providers not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. Provider or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.

e. The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with Provider.

f. The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

I. Safety Precautions and Programs. Provider shall ensure that its contractor and subcontractors performing work on the Site comply with the following safety precautions.

1) Provider's contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the construction and installation of the Systems, for maintaining all safety and health conditions on each site and for ensuring against and/or correcting any hazardous conditions on the site.

2) Certain work may be ongoing at the time school is in session therefore, Provider's contractor shall take precautions to prevent injury and access to children and staff and shall comply with the District's guidelines for onsite safety. Material storage and vehicle access and parking shall be subject to District approval.

3) The use of alcohol, drugs, or tobacco will not be permitted on District property. Workers employed by Provider's contractor or subcontractors shall have no contact with students. All workers will present themselves with appropriate language, actions and work wear while on construction site.

4) Provider's contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and overall jobsite safety for contractor/subcontractor employees and visitors.

5) If necessary, as determined in District's sole discretion, Provider shall ensure that all person entering the Properties to construct or work on the System comply with the provisions of California Education Code § 45125.1, regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of employees of entities with a contract with a school district. Provider shall not permit any person entering the Properties to construct or work on the Projects to have any contact with District pupils until such time as Provider has verified in writing to District that such person has not been convicted of a felony, as defined in Education Code § 45125.1.

J. Conduct of Project Construction, Installation, Alteration, Operation, Repair, Maintenance and Removal. Throughout the Term of this Agreement, all work of construction, installation, alteration, operation, repair, maintenance and removal of the Projects shall conform with the following:

1) Provider shall not leave debris under, in, or about the Site, but shall promptly remove same from the Site and dispose of it in a lawful manner.

2) Provider shall remove rubbish and debris on a daily basis during the period of its activities at the Site.

3) When performing activities at the Site Provider shall enclose the working area with temporary fencing adequate to keep District pupils out of the work area and physically segregated from any and all workers on or about the Site. Provider shall coordinate with District's designated contact to develop a mutually agreeable schedule for any activity at the Site to mitigate any inconvenience to or disruption of students, faculty, and staff in their regular activities and to otherwise eliminate any substantial interference with normal operations of the Site.

4) Provide fencing and/or demarcations around any shrubs or trees indicated to be preserved, sufficient to protect such foliage from substantial damage that might ordinarily occur during activities of the kind undertaken by Provider at the Site.

5) Deliver personnel, tools, equipment and materials to the work area over route(s) reasonably designated by the District, provided that District ensures that Provider shall have all access rights necessary to use such designated routes.

6) Take commercially reasonable measures to mitigate objectionable dust, noise, or other disturbances as necessary to ensure Provider's activities do not result in substantial interference with or disruption of regular Site activities and normal operations of the Site.

7) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or the reasonable directions of the District, not unreasonably encumber Site or overload any structure with materials, enforce all reasonable instructions of the District regarding signs, advertising, fires, and smoking and require that all workers comply with all District's regulations while on the Site.

8) Prior to any Provider employee or personnel, or any employee(s) or personnel of any subcontractor thereto, enters onto any property of the District, Provider shall execute and abide by the Student Safety Certification provided by District.

9) Upon completion activities on the Site, Provider shall remove temporary utilities, fencing, barricades, planking, sanitary facilities and all similar temporary facilities from Site.

10) Provider shall remain strictly liable to District for all damages to District's property caused or contributed to by Provider, its employees and/or agents and shall, upon written demand by District, restore all district property damaged by Provider, its employees and/or agents to substantially the condition in which it was prior to said damage occurring at the sole cost and expense of Provider.

6. Commercial Operation Date; Conditions Precedent; Notice to Proceed.

A. Conditions Precedent to Construction. Provider shall complete pre-construction activities relating to the System ("**Construction Conditions Precedent**") within ~~ninety~~ one hundred eighty (~~90~~180) days after the Effective Date:

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1) Provider shall have completed all design and engineering of the System(s) in accordance with the requirements of Article 5, above, including, without limitation, having obtained all necessary approvals, permits and entitlements precedent to construction or installation.

2) Provider shall submit to District certificates of insurance and endorsements demonstrating compliance with the requirements defined in Section 17 of this Agreement and carriage of workers' compensation insurance.

3) Provider shall submit to District the certificates in a form provided by District regarding compliance with statutory student safety, tobacco use and drug use.

4) Provider shall submit to District a fully executed copy of any and all contracts entered into for the engineering, procurement and/or construction of the System.

5) Provider shall submit an interconnection application to the Distribution Utility and undertake all commercially reasonable efforts to assess the capacity of the Distribution Utility facilities, including, but not limited to, the applicable

transformer(s) and conductor(s) and provide a written assessment of such to District.

6) Provider shall submit to District for approval a 90% completed design of the System, a detailed construction and installation schedule and a detailed project safety plan. Provider's construction and installation schedule shall include start and completion dates for all categories of work on the Site, including but not limited to pre-construction activities, installation of major equipment and anticipated Site deliveries and all required submittal and procurement documentation.

7) Provider shall submit to District evidence that Provider has obtained and secured sufficient financing to fund Provider's obligations under this Agreement. Such evidence shall be subject to District's approval and shall include a signed letter from the financing entity describing its intent and commitment to finance the project.

8) Provider shall obtain or cause to be obtained all necessary Permits, entitlements, contracts and agreements required for the installation, operation and maintenance of the System and the sale and delivery of Output to District.

B. Completion of Condition Precedent to Construction; Termination. If Provider is unable to timely complete any of the Construction Conditions Precedent (1) through (6) above by the "**Conditions Precedent Deadline**" (one hundred and twenty (120) days after the Effective Date), District may, but is not required to, either (i) waive or extend such requirements in a written notice to Provider; or (ii) terminate this Agreement without triggering the default provisions of this Agreement, including, but not limited to any default provision requiring the payment of the Termination Value, nor shall any such termination subject District to any other liability. Upon Provider's timely satisfaction of all Construction Conditions Precedent and written confirmation from Provider of the same, District shall issue a notice to proceed to Provider ("**Notice to Proceed**") within ten (10) business days, informing Provider that it may commence the construction of the System on the Site. Provider shall not proceed with construction of the System until it has received the Notice to Proceed. Provider shall promptly provide District with copies of all forms, documents and communications received or generated by Provider in connection with this Agreement.

C. Construction; Commercial Operation. Promptly upon receipt of the Notice to Proceed from District, Provider shall commence construction of the System, subject to Exhibit G, and shall cause complete installation and start-up of Commercial Operation thereof on or before [DATE] (the "**Commercial Operation Deadline**"). Prior to declaring Commercial Operation, Provider shall achieve the following:

1) Effect the execution, in coordination with District, of all agreements required for interconnection of the System with the Distribution Utility, including, without limitation, the Interconnection Agreement and net metering agreement if applicable; and

2) Ensure that all necessary connections and equipment are installed in compliance with all applicable codes and standards, and that Provider has procured or caused the complete installation of all necessary equipment and protection devices to enable delivery of Output from the Delivery Point to District's facilities.

3) Obtain or cause to be obtained all necessary Permits, entitlements, contracts and agreements required for the operation and maintenance of the System and the sale and delivery of Output to District.

4) Provide written confirmation that (i) all required commissioning has been completed; (ii) District and its agents have been provided access to the monitoring data for the System at the level required by this Agreement; and (iii) all closeout activities outlined in Section 7.1 of Exhibit G have been completed.

D. Commercial Operation. The "**Commercial Operation Date**" shall be the date on which Provider accurately notifies District of the fact that the System is mechanically and electrically complete and operational and providing Output through the Meter(s) to the Delivery Point under approved and executed Distribution Utility Interconnection Agreement and that Provider has met all of the requirements in Section 6(C) above. Provider shall cause the Commercial Operation Date to occur on or before the Commercial Operation Deadline.

Provider shall be solely liable to District for any delay by Provider or Provider's contractor(s) in completing the work, including any costs of District associated with impacts to the Site or a delay in the Commercial Operation Date.

If Commercial Operation has not commenced on or before the thirtieth (30th) day following the Commercial Operation Deadline, District may, but shall not be required to, assess Delay Liquidated Damages against Provider in an amount equal to $~~1,000~~500 per Day. If Commercial Operation has not commenced on or before the ninetieth (90th) day following the Commercial Operation Deadline, District may, but shall not be required to, terminate this Agreement without triggering the default provisions of this Agreement as to District or any other District liability, including any default provision which would otherwise require payment of the Termination Value.

Liquidated damages may also be applied to compensate District for undue delays in the completion of punch list items, Final Binder, site clean-up, demobilization, and miscellaneous contractual obligations after Commercial Operation has been achieved. The cost to District for administration, inspection, mileage, and other similar items would be extremely difficult to determine. For that reason, additional liquidated damages, known as Administrative Delay Liquidated Damages shall be imposed in the amount of $~~500~~ 100 per day, effective 30 days after Commercial Operation has been achieved. Charges will be assessed until District agrees that all outstanding work has been completed.

E. Extension of Commercial Operation Deadline. Provider may request in writing an extension of the Commercial Operation Deadline. At the time of the request, Provider shall present District in writing with the reason for delay, confirmation that Commercial Operation shall

commence within the requested extension time as well as valid and persuasive evidence demonstrating that the delay in achieving the Commercial Operation Deadline could not have been reasonably avoided by Provider. Provider's written request must also state the date on which Provider reasonably believes Commercial Operation will be achieved following such extension. The approval of the request will be at the sole discretion of District and if approved by District, Provider shall pay to District a non-refundable extension fee of $350 per day for each day of the extended time period. To the extent that Provider fails to meet the Commercial Operation Deadline as extended by District pursuant to this Section, District shall have the options to terminate or assess liquidated damages as set forth in subsection D above.

7. Ownership of System, Output, Green Attributes and Environmental Financial Incentives.

A. Ownership of System. Title to the System shall remain with Provider during the Term unless and until District exercises its option to purchase the System as set forth herein. None of the System, including, but not limited to any components thereof may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by District. District shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through District. Provider shall bear all risk of loss with respect to the System, except for losses arising from the negligence or willful acts or omissions by District, or their agents or employees. Provider shall be solely responsible for the System operation and maintenance in compliance with all applicable laws, regulations and Permits. Provider shall not be responsible for the cost or expense of any maintenance required as a direct result of District's negligence or willful misconduct.

B. Ownership of Output, Green Attributes and Environmental Financial Incentives. Provider is the exclusive owner of any Environmental Financial Incentives associated with the construction, ownership and operation of the System. District will assign its interest (if any) in all such credits and other financial incentives to Provider. District is the exclusive owner of, and may assign or sell in its sole discretion, all Green Attributes, including, but not limited to, Renewable Energy Certificates ("**REC**"), and REC Reporting Rights, attributable to the System and the Output therefrom. Without additional charge to District, Provider shall take and bear the costs of all steps necessary to secure and perfect District's interest in the Green Attributes, including, but not limited to, registering the RECs with WREGIS. The Parties agree to subsequently negotiate in good faith the ownership of any additional benefit or incentive associated with this Agreement which did not exist at the time this Agreement was entered into.

8. Payment.

A. Monthly Invoices. Provider shall provide an invoice for the System to District on a monthly basis, by the 15th day of each calendar month following the Commercial Operation Date of the System. Each invoice will set forth (i) the Output delivered in the preceding month, (ii) the Power Price for such month, (iii) the total amount to be paid by District to Provider for Output delivered in the preceding month, (iv) the year and month of the PPA term, (v) Annual Production Estimate for the relevant year as set forth in Exhibit B, (vi) running total of Annual Production Estimate for the relevant year as set forth in Exhibit B versus cumulated actual Output for the relevant year, (vii) and any applicable offsets or credits to such invoice amounts.

B. Due Date. All payment of invoices shall be in U.S. Dollars and paid by wire transfer, check, or automated check handling (ACH) payment delivered to Provider at the address specified herein within ~~forty-five~~fifteen (~~45~~15) Days of the date the invoice is received by District ("**Due Date**"). If the Due Date is a weekend or a bank holiday, payment will be due the next following business day. District shall be excused for any delay in payment due to circumstances beyond its control, including, without limitation, Force Majeure and delays in processing or approvals by governmental authority with jurisdiction thereof, including, without limitation, the County Office of Education. Interest at the rate of 12% p.a will be charged for delayed payment except due to Force Majeure.

C. Payment Disputes. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, such disputes shall be resolved pursuant to Section 15.

9. Purchase Option.

A. Purchase of System. Unless District is in default of its obligations under this Agreement, District shall have the option to purchase all of Provider's right, title, and interest in and to the System on each anniversary of the Commercial Operation Date or upon expiration of the Term hereof ("**Purchase Option**"). If District wishes to exercise its Purchase Option, it must provide notice to Provider at least ninety (90) Days in advance of any such anniversary or the expiration of the Term. The purchase price shall be the greater of (i) the Fair Market Value, as defined under this Agreement, of the System as of the applicable anniversary date or the expiration of the Term or (ii) the applicable Purchase Option Price indicated in Exhibit E. Upon the exercise of the Purchase Option and Provider's receipt of all amounts then owing by District under this Agreement, the Parties will execute all documents necessary for the purchase and sale of the System, including but not limited to, the delivery of the purchase price, the transfer of title to the System, and to the extent transferable, the remaining period, if any, on all warranties and Environmental Financial Incentives and Green Attributes for the System to District. Provider shall remove any encumbrances placed or allowed on the System by Provider. On the date on which Provider transfers title to the System to District in accordance with this Section, this Agreement shall terminate without default or penalty to District.

B. Fair Market Value. The "**Fair Market Value**" of the System shall be the value thereof as determined by a nationally recognized independent appraiser selected by the Parties, with experience and expertise in the solar photovoltaic industry to value such equipment. The Fair Market Value of the System shall be based upon its fair market value in continued use for the Term, and including the costs of removal, shipping and reinstallation, as a cost credit against the value of the System. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two appraiser firms proposed by each Party.

10. Early Termination.

A. Provider's Early Termination Rights. Provider shall have the right, but not the obligation, to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement prior to expiration of its Term upon the occurrence of:

1) An unstayed order of a court or administrative agency, or a change in state or federal law or regulation, imposing a material cost, regulation or other requirement upon the sale of Output which precludes the Provider from providing Output pursuant to this Agreement. Such termination shall be conditioned upon Provider's proof of the financial impossibility and violation of Provider's System financial arrangement to the reasonable satisfaction of District.

2) Condemnation, destruction, or other material damage to the Site that results in the termination of the easement to such Site.

In the event Provider exercises its right under this Section, District may elect to either (i) purchase the System pursuant to Section 9 as of the time of Provider's notice; or (ii) require Provider to remove the System within one hundred eighty (180) days at Provider's sole cost and expense and restore the Site as required in Section 3.

B. District's Early Termination Rights. If District ceases to conduct operations at or vacates a Site, District may, upon payment to Provider of the Termination Value, without further penalty hereunder, terminate this Agreement. Provider shall remove the System at the Site in accordance with Section 3.

11. Delivery; Risk of Loss; Relocation.

A. Output Specifications. Provider shall ensure that all energy generated and / or discharged by the System conforms to Distribution Utility specifications for energy being generated and / or discharged and delivered to the Sites' electric distribution systems, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of Distribution Utility testing and verification, and all related costs.

B. REMOVED.

C. Transfer of Output. Provider shall be responsible for the delivery of Output to the Delivery Point. Provider shall undertake all commercially reasonable efforts to assess the capacity of the Distribution Utility transformer(s) and conductor(s). To the extent any subsequent upgrade to such facilities is required and not performed and funded by the Distribution Utility, the Provider shall cause such upgrades to be completed at its sole cost and expense. Title and risk of loss of the Output shall pass from Provider to District upon delivery of the Output from the Delivery Point to District. To the extent applicable to the Project, prior to the start of construction of the System, Provider shall use commercially reasonable efforts to assist with District's selection of equipment installations on District's side of any Delivery Point.

D. Relocation. On or after the seventh (7th) anniversary of the Commercial Operation Date, District may, at its option, require that the System be permanently relocated, either on the

existing Site or to another site of District's choosing, at a location with at least equal insolation to the existing Site and reasonably acceptable to both Parties (the "**Relocation Site**"). District shall give Provider at least sixty (60) calendar Days' notice of District's need to move or relocate the System. Following agreement on a Relocation Site, the Parties will amend this Agreement to memorialize the required changes in the definition of "**Site**."

District shall pay the reasonable costs arising in connection with the relocation of the System, including removal costs, necessary storage costs, re-installation, re-commissioning costs, and any applicable interconnection fees, provided that Provider provides District with information detailed herein below in a timely manner. District shall additionally compensate Provider for any revenue during the period in which energy cannot be generated and delivered to District from the System being relocated, at District Suspension Rate, as defined below, prorated as needed to apply on a daily basis. District shall also execute such consents or releases reasonably required by Provider or Provider's financing Parties in connection with the relocation. Within thirty (30) Days of agreement on a Relocation Site, Provider will provide District with a calculation of the estimated time required for such relocation, and the total anticipated amount of lost revenues and additional costs to be incurred by Provider as a result of such relocation. District will have twenty (20) Days to review the calculation and make, in writing, any objections to the calculation. Provider shall make all commercially reasonable efforts to achieve the relocation of the System in the estimated time and for the estimated cost provided to District. All additional time and / or costs shall require advance written approval of District.

If an acceptable Relocation Site cannot be located, this Agreement shall terminate with respect to the Site, upon Provider's thirty (30) Days' written notice. In the event that an acceptable Relocation Site cannot be agreed upon, District shall pay Provider an amount equal to the Termination Value. In the event of a termination occurring under this Section, Provider shall remove the System and restore the Site in accordance with Section 3, at no additional cost to District.

E. Temporary Suspension by District. Notwithstanding any other provision of this Agreement, District shall have the right, upon written notice to Provider, to temporarily suspend operations and Output and / for any reason. District shall have the right, upon written notice to Provider, to temporarily render the System non-operational for up to forty-eight (48) hours per year without penalty or charge by Provider. If District requires temporary suspension of the System for more than forty-eight (48) hours in a given year, District shall pay to Provider an amount, prorated as necessary, equal to the amount of the monthly payment for power purchased pursuant to this Agreement for the same month(s) (or portion thereof) in the preceding twelve (12) months, or for the average of the entire period the System has been in Commercial Operation if less than twelve (12) months, for the period of time during which the System is not in Commercial Operation in excess of forty-eight (48) hours ("**District Suspension Rate**") due to the temporary suspension by District.

F. Temporary Suspension by Provider. Provider shall have the right, upon written notice to District, to temporarily render the System non-operational for up to forty-eight (48) hours per year without penalty or charge by District. If Provider renders the System non-operational for a period in excess of forty-eight (48) hours, Provider shall pay to District a monthly payment

(prorated as needed) equal to the difference between the cost to the District of purchasing energy for the combined services of the Distribution Utility and District during the System's period of non-operation and the average monthly cost of power purchased under this Agreement for the preceding twelve (12) months, or for the entire period the System have been in Commercial Operation if less than twelve (12) months, for the period of time during which the System are non-operational.

If an Outage occurs under this Section and a payment is due from Provider to District, Provider shall include in its next invoice(s) to District (and in the final invoice for any credit owed for the final Contract Year) a credit for the difference between the electricity cost as provided by the Distribution Utility to District for the applicable period.

G. Change in Conditions. If District requests an increase in the Output delivered to the Delivery Point, the Parties agree to use good faith efforts to increase such capacity. If Provider and District are not able to reach an agreement for such additional Output, District may, at its sole discretion, obtain the services of a third party for such purposes, provided that such additional third party provided services and any site easement shall not interfere with Provider's right, title and interest in the System under this Agreement.

H. Performance and Payment Bonds. Provider shall deliver to District evidence that the prime contractor performing the construction and installation services of the Systems maintains payment and performance bonding in favor of the Provider and meeting the following requirements, which shall be provided to the District prior to the commencement of construction on any Site:

a. Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of the Provider's construction contract price payable under the contract securing the faithful performance of the contractor of its contract with Provider; and

b. Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of Provider's construction contract payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

c. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California and shall be in the form provided by District.

I. REMOVED.

J. Provider shall make no alteration to the System after the Commercial Operation Date intended or reasonably anticipated to permanently increase the nameplate capacity, Output, of the System without express written approval by District. Notwithstanding the foregoing, Provider may alter the System's nameplate capacity on a temporary basis when performing maintenance and repair

activities provided that Provider returns the System's nameplate capacity to that as of the Effective Date upon the completion of such activities.

12. Metering.

A. Meter. Provider shall provide and maintain standard revenue grade meters and an electronic data acquisition system at the Delivery Point (each a "**Meter**", collectively "**Meters**") to individually measure the actual amount of electricity supplied to District by each of the Solar Facility on a continuous basis. Meters shall be installed and maintained at Provider's sole expense and shall be located in close proximity to the Delivery Point and in all cases on the Distribution Utility side of all Provider owned transformers and other electrical losses.

B. Meter Testing. Provider shall arrange for all Meters to be tested prior to Commercial Operation and once per year after Commercial Operation within thirty (30) days of the anniversary of the Commercial Operation Date.. The tests shall be conducted by independent third parties who are qualified to conduct such tests. Provider shall bear all costs and expenses associated with annual Meter testing. District shall be notified ten (10) Days in advance of such tests and shall have a right to be present during such tests. Provider shall provide District with the detailed results of all Meter tests.

In addition, the Meters shall be inspected and tested for accuracy at such other times as District may reasonably request, but in no event more than once every six (6) month period. District shall bear the cost of the additionally requested Meter testing, unless such test shows that a Meter was inaccurate by more than two percent (2%), in which case the Provider shall bear the Meter testing costs.

C. Cost of Meter Repair. If the Meter testing demonstrates that a Meter was operating outside of its allowable calibration (+/- 2%), then the Provider will pay for the cost of the repairs, or replacement, necessary to restore a Meter to proper working order. If a Meter is found to be inaccurate by more than two percent (2%), Invoices from the prior six (6) months, or from the last time such Meter was registering accurately, whichever is less, shall be adjusted in accordance with Section 8, except that District shall not be obligated to pay interest on any amount found to be due because Meter was operating outside of its allowable calibration (+/- 2%). Provider shall submit any request for an adjustment to District no later than two (2) months after Meter testing had been performed, and District shall not be obligated to pay any adjustment for a prior fiscal year that was not submitted to District within two months after Meter testing was performed. District may withhold payments to Provider if a Meter has registered production in excess of 2% of the Output delivered to District and Provider fails to provide District with the appropriate payment pursuant to Section 8 for the amount which District overpaid to Provider as a result of the Meter being outside of the established calibration range.

D. Meter Data. Provider shall gather and maintain the data from a Meter, including but not limited to interval data registered at least once every fifteen (15) minutes (the "**Meter Data**") and shall make such Meter Data available to District or maintain the Meter Data such that District can access the Meter Data remotely through a secure internet site or such other remote access as the Parties mutually agree to.

E. Meter Data Audit. District shall have the right to audit the Invoices and/or the Meter Data once per calendar year. If the audit reveals that District has been overcharged by more than two percent (2%), Provider shall bear the cost of such audit, but in all other cases District shall bear the cost of such audit.

F. Maintenance of Meter Data. The Parties shall maintain all records related to Invoices and Meter Data for a period of the greater of (i) forty-eight (48) months from the date of such Invoice or Meter Data, or (ii) as otherwise required by law. Such records shall be available for audit as described in above.

13. Representations, Warranties and Covenants.

A. Authorization and Enforceability. Each Party represents to the other Party as of the Effective Date that: (i) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) the execution and delivery by such Party of, and the performance of its obligations under, this Agreement has been duly authorized by all necessary action, does not and will not require any further consent or approval of any other Person, and does not contravene any provision of, or constitute a default under such Party's organizational documents, any indenture, mortgage or other material agreement binding on such Party or any valid order of any court, or regulatory agency or other body having authority to which such Party is subject; and (iii) this Agreement constitutes the legal and valid obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

B. Insolation. District agrees that access to sunlight ("**Insolation**") is essential to Provider's ability to provide the projected Output and is a material inducement to Provider in entering into this Agreement. Accordingly, District shall not permit any interference with Insolation available to the System. If District becomes aware of any potential development, foliage or trees, or other activity on adjacent or nearby properties that will diminish the Insolation to the System, District shall advise Provider of such information and reasonably cooperate with Provider in reasonable measures taken by Provider in an attempt to preserve existing levels of Insolation upon the System.

C. Notice of Damage. Each Party shall promptly notify the other Party of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

14. Default and Remedies.

A. Events of Default. In the event of a Party's breach of any performance obligation hereunder or breach of any representation, warranty, covenant or term of this Agreement, the non-defaulting Party shall provide the defaulting Party with written notice of the default, which notice shall describe the default in reasonable detail. Following the date of receipt of written notice of default, the defaulting Party shall have thirty (30) Days to cure any payment default and forty-five (45) days to cure any other breach or default described in this Agreement; provided, however, that

with respect to non-payment defaults, the cure period shall be extended by the number of days (not to exceed an additional ninety (90) Day period) during which an event of Force Majeure is occurring or during which the defaulting Party has begun corrective action and continues to diligently pursue, using commercially reasonable efforts, the completion of such corrective action.

B. Event of Default. In addition to the foregoing, with respect to a Party, there shall be an event of default (each an "**Event of Default**") if:

1) such Party fails to timely pay any amount due;

2) such Party concedes in writing to its inability to pay its debts generally as they become due;

3) such Party files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, City or territory thereof;

4) such Party makes an assignment for the benefit of creditors in connection with bankruptcy proceedings;

5) such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;

6) such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within sixty (60) Days after the filing thereof;

7) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) Days from the date of entry thereof;

8) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within sixty (60) Days from the date of assumption of such custody or control;

9) such Party ceased its legal existence or ceases doing business or otherwise dissolves; or

10) such Party breaches a material term of this Agreement.

C. Provider Remedies. If an event of default by District under Sections 14(A) or 14(B) has occurred and is continuing, then following the expiration of any applicable cure period, Provider may at its discretion: (i) suspend performance under this Agreement, (ii) seek specific performance from a court of appropriate jurisdiction pursuant, and/or (iii) terminate this

Agreement, and as Provider's sole and exclusive remedy in connection with such termination, require District to pay to Provider as liquidated damages, and not as a penalty, the Termination Value for the System, and any and all amounts then owed Provider for Output delivered to District as of the date of such termination pursuant to this Agreement. In the event of such termination, Provider shall remove the System in accordance with Section 3, at Provider's sole cost and expense.

D. District Remedies. If an event of default by Provider under Sections 14(A) or 14(B) has occurred and is continuing, then following the expiration of any applicable cure period, District may at its discretion: (i) suspend performance under this Agreement, (ii) seek damages or specific performance from a court of appropriate jurisdiction, and/or (iii) terminate this Agreement. In the event that District terminates this Agreement pursuant to this Section, District may elect to either (i) purchase the System pursuant to Section 9 as of the time of the event of default; or (ii) require Provider to remove the System within one hundred eighty (180) Days at Provider's sole cost and expense and restore the Site as required in Section 3.

15. Dispute Resolution.

The Parties agree to make a good faith attempt to resolve any and all controversies, claims, disagreements, or disputes between the Parties arising out of or related to this Agreement ("**Dispute**"). In the event of any Dispute, either Party may give notice of the dispute to the other Party. In the event a Party Disputes all or a portion of an invoice or other payment, the disputing Party shall timely pay any undisputed portion of such amount due. The Parties shall first use good faith, reasonable, diligent efforts to resolve the dispute within ninety (90) Days from the date of such notice. If the Parties do not resolve their dispute within ninety (90) Days of notice, then the Parties may, upon mutual agreement, submit to mediation before a mutually agreed upon mediator. In the event the dispute is not resolved through mediation, the Parties may pursue their legal rights through any other legally permissible means. If a Dispute, or any portion thereof, remains unresolved after applicable dispute resolution requirements, the Provider shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Provider's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time the Provider submits its written Dispute until the time the Dispute is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Provider and its subcontractors shall continue to perform the work under the Agreement and shall not cause a delay of the work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of District.

16. Taxes; Liens.

A. Taxes. Provider shall pay any income taxes imposed on Provider due to the sale of energy under this Agreement. District shall pay all real property taxes and assessments applicable to the Site. This Agreement may result in the creation of a possessory interest (Rev. & Tax. Code § 107.6). If such a possessory interest is vested in Provider, Provider may be subjected to the payment of personal property taxes levied on such interest in the System. Provider shall be responsible for the payment of, and shall pay before becoming delinquent, all taxes, assessments,

fees, or other charges assessed or levied upon Provider, the Project and the System. Provider further agrees to prevent such taxes, assessments, fees, or other charges from giving rise to any lien against the Site or any improvement located on or within the Site. Nothing herein contained shall be deemed to prevent or prohibit Provider from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law. Provider shall be responsible for payment of any personal property taxes, possessory interest taxes, permit fees, business license fees and any and all fees and charges of any nature levied against the System and operations of Provider at any time. If bills for taxes on the System are received by District, District shall remit such bills to Provider.

B. Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Site or District's interest therein. If Provider breaches its obligations under this Section, it shall immediately notify District in writing, shall promptly cause such lien to be discharged and released of record without cost to District, and shall defend and indemnify District against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

17. Liability and Indemnity; Insurance.

A. Indemnity. To the fullest extent provided for by law, each Party ("**Indemnifying Party")** agrees to indemnify, defend and hold harmless the other Party, its directors, officers, employees, and agents (each, an "**Indemnified Party**") from and against any and all claims, whether or not involving a third-party claim, including demands, actions, damages, loss, costs, expenses, and attorney's fees (collectively, "**Indemnity Claims**"), arising out of or resulting from any breach, negligent act, error or omission or intentional misconduct by the Indemnifying Party or its trustees, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement; provided, however, that the Indemnifying Party will not have any obligation to indemnify the Indemnified Party from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of an Indemnified Party or any of its directors, officers, employees or agents.

If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. Defense and indemnification provided by the Indemnifying Party under this Section shall be provided with legal counsel reasonably agreed to by the Identified Party. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent.

B. Insurance.

1) Provider Insurance. At all times during the term of the PPA, and any necessary extension thereof for removal of the System from the Site, Provider and all sub-contractors, shall obtain, maintain and keep in full force and effect the following insurance for coverage of all obligations and associated activities under this Agreement, including but not limited to the use and occupancy of the Site, the business operated by the District thereon, and the construction, installation,

operation, maintenance and repair of the System, in the amounts, and with the conditions required, as set forth herein. Each policy required in (b)(c)(d) below shall include an additional insured endorsement in favor of District with an additional insured endorsement for both ongoing and completed operations as it pertains to (b) and shall include an endorsement specifying that such coverage is primary and non-contributory as to any other coverage available to the additional insured. Provider shall, within thirty (30) days of the Effective Date of this Agreement and annually thereafter or as requested by District, provide certificates of insurance and endorsements demonstrating compliance with the requirements of this Section.

a. Workers' Compensation Insurance for Provider's employees to the extent of statutory limits and Occupational Disease and Employer's Liability Insurance for not less than $1,000,000 per occurrence.

b. Commercial General Liability Insurance with a $2,000,000 per occurrence and $5,000,000 aggregate limit of liability for Bodily Injury, Personal and Advertising Injury and Property Damage Liability, including coverage for Contractual Liability and Products and Completed Operations Liability.

c. Automobile Liability Insurance with limits not less than: Bodily Injury coverage at $2,000,000 each accident, and Property Damage coverage at $2,000,000 each accident.

d. Excess Liability Insurance in an aggregate amount of not less than $5,000,000 providing greater limits of insurance to Provider's Employer's Liability, Commercial General Liability and Automobile Liability Insurance which also shall not be more restrictive than coverage provided by these policies.

e. Builder's Risk/Installation Floater Insurance in a sufficient amount to protect Provider's property, materials, tools and other financial interests on the Project.

f. Professional Liability Insurance with limits not less than $1,000,000 per claim, with a two-year tail.

2) District Insurance. District shall maintain and covenants that it shall maintain during the Term (i) insurance sufficient to insure it against loss or destruction of the Site, including losses occasioned by operation of the System, and (ii) general liability insurance including bodily injury, property damage, contractual and personal injury. Notwithstanding the foregoing, District reserves the right to self-insure.

3) Waiver of Subrogation. Provider shall cause each insurance policy obtained by them to include a waiver of subrogation or waiver of the transfer of rights of

recovery against District by the insurer in connection with any damage covered by any policy of Provider. District reserves the right to request copies of any insurer endorsements that may be necessary to affect this waiver of subrogation.

4) Subcontractor Insurance. Provider shall require and verify that all of its subcontractors maintain insurance meeting all of the requirements stated herein.

18. Easement.

District shall grant to Provider an easement for the sole purpose of access to, on, over, under and across the Site for the purposes of undertaking the work required by Provider under this Agreement, including: installing, constructing, inspecting, operating, owning, maintaining, accessing, repairing, removing and replacing the System (the "**Site Easement**"). During the period of time between and including the date of the Notice to Proceed and the Commercial Operation Date, the Site Easement shall include, subject to the scheduling and activity needs of District, the reasonably necessary use of District's Site for the reasonably necessary construction and installation activities under this Agreement, including, but not limited to, staging areas. District shall have no liability whatsoever in connection with property or equipment of Provider or Provider's contractor(s), subcontractors or vendors. The Site Easement term shall continue until the date that is one hundred eighty (180) days following the date of expiration or termination of this Agreement. Provider shall notify District prior to entering the Site except in situations where there is imminent risk of damage to persons or property.

19. Assignment; Cooperation with Financing.

A. Assignment by Provider. Except as expressly provided in this Agreement, Provider may not sell, transfer, or assign its rights under this Agreement or any right, interest, or obligation therein (collectively, an "**Assignment**"), until at least twenty four (24) months have expired following the Commercial Operation Date, and only upon the prior written consent of District, which consent may not be unreasonably withheld, conditioned or delayed, provided that any assignee possesses all required skills, knowledge, expertise, experience, and financial capacity and creditworthiness necessary to perform Provider's obligations under this Agreement, and assumes in writing the obligations of Provider under this Agreement. Provider shall provide District with no less than sixty (60) Days' notice of the request to transfer ownership of the Project. Notice shall identify the party purchasing the Project and provide sufficient detail of the proposed owner for District to evaluate the new owner. Notice shall include, but not be limited to, the following details of the proposed owner: Experience with PPAs and current portfolio; Past two years of financials; Proof of insurance, meeting District requirements and naming District; Confirmation of operations and maintenance provider and outline of operations and maintenance program if different from existing; Details and example of annual report and invoicing; and Confirmation that all terms under this Agreement and any related documents and agreements will be performed. Notwithstanding the foregoing, Provider may, without the prior written consent of District, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Secured Party in connection with any financing for the ownership, acquisition, construction, operation or use of the System as set forth in subsection B, or (ii) assign this Agreement to an affiliate of Provider which is controlled by Provider or under common control with Provider. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

B. Collateral Assignment by Provider for Financing Purposes. In the event Provider assigns its rights under this Agreement as security in connection with any financing transaction entered into by Provider, Provider may mortgage or grant a security interest in this Agreement and the System, and may collaterally assign this Agreement and the System to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "**Secured Parties**"), provided that any such collateral assignment of this Agreement by Provider shall not release Provider from its obligations or liabilities under this Agreement. District agrees to not unreasonably withhold, condition or delay its compliance with any reasonable request that District execute any consent, estoppel agreement or other documents related to such financing transaction as may reasonably be required by such Secured Parties, provided that Provider will reimburse District for the legal fees and costs incurred by such assignment.

C. Assignment by District. Except as otherwise provided in this Agreement, District may assign its rights under this Agreement only upon the prior written consent of Provider, which consent may not be unreasonably withheld, conditioned or delayed; provided that any such assignee (i) is of equal or greater creditworthiness than District and (ii) assumes in writing the obligations of District under this Agreement. Notwithstanding the foregoing, District may assign its rights under this Agreement without Provider's consent to any Person succeeding to all or substantially all of the assets of District of equal or greater creditworthiness than District, and provided, further, that any such transferee or assignee assumes in writing the obligations of District under this Agreement.

20. Confidentiality; Publicity.

A. Confidential Information. Any financial, statistical, personal, technical and other data and information relating to a Party's operations which are made available to the other Party in order to carry out this Agreement shall be reasonably protected by such other Party from unauthorized use, except to the extent that disclosure thereof is required to comply with applicable law, including but not limited to the California Public Records Act and the Brown Act. The disclosing Party shall identify all confidential data and information at the time it is provided in writing, including by conspicuously marking each such document as "Confidential." Confidentiality does not apply to information, which is known to a receiving Party from other sources, which is otherwise publicly available, or which is required to be disclosed pursuant to an order or requirements of a regulatory body or a court.

1) Confidential Information shall comprise that which Provider identifies as confidential in accordance Applicable Law, including the California Public Records Act, California Government Code § 6250-6270 ("CPRA"), such as, for example only, trade secrets.

2) The Parties agree and acknowledge that this Agreement, and each document incorporated herein, is a public record subject to public disclosure, and shall be publicly disclosed in conjunction with any actions by District's Governing Board related to approval or ratification hereof, including, without limitation, consideration during a public hearing as required under Government Code section 4217.12.

3) District shall not be liable to Provider for any disclosure made it its reasonable determination and in good faith compliance with applicable provisions of the CPRA, and Provider will be solely responsible for and shall solely bear all costs and expenses related to or arising from litigation costs if Provider chooses to pursue enforcement of its rights under the CPRA, and shall reimburse District for all reasonable costs and expenses related to or arising from litigation related to this Article 20 in which District is reasonably compelled to engage

B. Disclosure. Other than under the REC Reporting Rights and except as may be required by applicable law, including but not limited to, the California Public Records Act, the Brown Act, or as otherwise identified above, neither Party shall make any disclosure of any designated confidential information related to this Agreement without the specific prior written approval from the other of the content to be disclosed and the form in which it is disclosed, except for such disclosures to the Parties' financing sources, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants and exchange facilitators as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws or rules of any exchange upon which a Party's shares may be traded. Notwithstanding the foregoing, nothing contained herein shall be deemed to restrict or prohibit District from complying with applicable law regarding disclosure of information, including but not limited to the California Public Records Act and the Brown Act.

C. Publicity. The Parties share a common desire to generate favorable publicity regarding the System and their association with it. The Parties agree that they may, from time to time, issue press releases regarding the System and that they shall reasonably cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the System without the prior written approval from the other of the content to be disclosed and the form in which it is disclosed, and each Party agrees not to unduly withhold, condition or delay any such approval. In addition, the Parties hereby agree that (i) the District may publicize that it is serving as a "solar host" for the System; (ii) Provider may publicize that it is serving as the developer, owner and/or operator of the System; and (iii) District, and Provider may display photographs of the System and disclose the nameplate capacity rating of the as-built System in its advertising and promotional materials, provided that any such materials identify the District as the solar host, and Provider as the owner, operator and developer, of the System and all information shall be consistent with this Agreement. Without limitation of the foregoing, Provider agrees to share with District, in digital format, any photographs and other schematics taken by Provider of the Site and the System, and further agrees that District may use such photographs and other schematics for the purpose of marketing and promoting their operations.

Nothing herein shall limit in any way, to any extent the right of individual persons, including, without limitation, members of District's Governing Board, from exercising their right to free speech in relation to this Agreement and any subject matter hereof, within the constraints of Applicable Law. Nothing herein shall compel either Party to make statements beyond its sole, reasonable, good faith discretion.

21. Legal Effect and Status of Agreement.

A. District Not Operator. Neither District nor any Party related to District shall have the right or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

B. Burdens/Benefits of System Ownership. Notwithstanding any provision to the contrary under this Agreement, neither District nor any Party related to District shall (i) bear or be deemed to bear any significant financial burden if there is nonperformance by Provider under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code; or (ii) be deemed to receive any significant financial benefit if the operating costs of the System are less than the standard of performance and/or operation set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of such facility are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

C. No Capital Lease; Forward Contract. The Parties acknowledge and agree that for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be treated by each Party as a service contract for the sale to District of electric energy produced at an alternative energy System. Each of the Parties agrees that it will not dispute that (i) the transaction contemplated by this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and (ii) each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

22. Miscellaneous.

A. Amendments. This Agreement may be amended only in a writing signed by both Provider and District or their respective successors in interest.

B. Notices. Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight courier service, or personally delivered to a representative of the receiving Party, or sent by facsimile or email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below. A Party may change its address by providing written notice to the other Party in accordance with this Section.

If to District:
[District NAME]
Attention: [CONTACT]
[ADDRESS]
[ADDRESS]
Phone: [PHONE NUMBER]
Facsimile: [FAX NUMBER]
Email: [EMAIL ADDRESS]

If to Provider:
[PROVIDER]
Attention: [CONTACT]
[ADDRESS]
[ADDRESS]
Phone: [PHONE NUMBER]
Facsimile: [FAX NUMBER]
Email: [EMAIL ADDRESS]

C. Non-Waiver. The failure, delay or forbearance by either Party to exercise any of its rights or remedies under this Agreement or to provide written notice of any default to a defaulting Party, will not constitute a waiver of such rights or remedies. No Party will be deemed to have waived any right or remedy unless it has made such waiver specifically in writing. The waiver by either Party of any default or breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition or provision contained herein.

D. No Set-Off. Except as otherwise set forth herein, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

E. Intellectual Property. Nothing in this Agreement shall be construed to convey to District a license or other right to trademarks, copyrights, technology or other intellectual property of Provider.

F. Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

G. Survival. Any provision of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

H. Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

I. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). The venue for any dispute arising out of or relating to this Agreement shall be in the California County in which the System is located.

J. Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

K. No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

L. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, other than the Indemnitees and any Secured Parties.

M. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Electronic, facsimile or copies of signature pages shall have the same force and effect as originals.

N. Further Assurances. Upon the receipt of a written request from a Party, each Party shall execute or cause to be executed such additional documents, instruments, estoppels and assurances, and take such additional actions, as are reasonably necessary and desirable to carry out the terms and intent hereof, including but not limited to an Interconnection Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

O. Entire Agreement. This instrument and the documents referenced herein represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

District:
[District NAME]

By: ________________________

Name:

Title:

PROVIDER:

[PROVIDER NAME]	[PROVIDER NAME]
By: ________________________	By: ________________________
Name:	Name:
Title:	Title:

Exhibit A – Definitions

1. "Annual Production Estimate" shall mean, for the Solar Facility, the estimated energy production for a Contract Year as set forth in Exhibit B.

2. "Applicable Law" shall mean, with respect to any person, any law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, license, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such person or its property, as any of the foregoing may be amended from time-to-time, and any corresponding provisions of any successor to the foregoing, together any rules or regulations promulgated under such successor.

3. "Assignment" shall have the meaning as defined in Section 19(A).

4. "Authorities Having Jurisdiction" shall mean the governmental organization, office or individual responsible for approving equipment, an installation or a procedure.

5. "Construction Conditions Precedent" shall have that meaning as set forth in Section 6(A) of the Agreement.

6. "Conditions Precedent Deadline" shall have that meaning as set forth in Section 6(B) of the Agreement.

7. "Contract Year" shall mean a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the first month following the Commercial Operation Date.

8. "Commercial Operation" shall mean that (i) the Project is operating and able to produce and deliver Energy to District pursuant to the terms of this Agreement; (ii) Provider has received all local, state and federal Permits and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities.

9. "Commercial Operation Date" shall mean the date on which Provider achieves Commercial Operation for the Project.

10. "Commercial Operation Deadline" shall have that meaning as set forth in Section 6(C) of this Agreement.

11. "Days" shall mean calendar days, unless otherwise specified.

12. "Delay Liquidated Damages" shall mean the daily rate payable by the Provider to District for unexcused delays past the Commercial Operation Deadline as outlined in Section 6(~~C~~D).

13. "Delivery Point" shall mean the Energy delivery point within Site's electrical system on District's side of the Site's Distribution Utility meter, as designated by the physical interface of the System with the Site's electrical system.

14. "Distribution Utility" shall mean Southern California Edison.

15. "Distribution Utility Upgrades" shall mean that scope of work and associated costs that the Distribution Utility requires on the Distribution Utility side of the Distribution Utility meter in order for the System to interconnect to the Distribution Utility system.

16. "Energy" shall mean electrical energy measured in kWhac.

17. "Energy Shortfall Amount" shall mean an amount equal to the product of: (i) the Output Guarantee Rate, multiplied by (ii) the difference between the delivered Output for such Measurement Period and the Output Guarantee for such Measurement Period.

18. "Environmental Financial Incentives" shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date: (i) investment tax credits associated with the development, construction, ownership or operation of the System, accelerated depreciation, and other financial incentives in the form of credits, reductions or allowances associated with the System that may be applied to reduce any state or federal income taxation obligation, and (ii) the right to claim federal income tax credits under Sections 26 or 48 of the Internal Revenue Code or any state tax law or income tax deductions with respect to the System under the Internal Revenue Code or any state tax law. Environmental Financial Incentives do not include Green Attributes.

19. "Expiration Date" shall mean the last day of the month that follows the twenty-fifth (25th) annual anniversary of the Commercial Operation Date.

20. "Force Majeure" shall mean any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, which cannot reasonably be avoided, mitigated or cured through the reasonable and diligent efforts of the Party claiming Force Majeure. It shall include, without limitation, interruption or delay of the construction of the System or failure or interruption of the production, delivery or acceptance of electricity due to: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions, extreme weather conditions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances or riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) action by a Governmental Authority resulting in a moratorium on the activities related to this Agreement; and (v) the inability of one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Permit necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such Permit is not attributable to the Party in question and that such Party has exercised due diligence to obtain such Permit. Force Majeure will not be based on (i) District's inability to use Energy purchased hereunder, (ii) Provider's ability to sell Energy at a price greater than the price of Energy under this

Agreement, or (iii) District's voluntary or involuntary shutting down or closing of the facilities located at the Property. Economic hardship of either Party shall not constitute Force Majeure.

21. "Governmental Authority" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national body exercising such powers or functions, such as the European Union or the European Central Bank).

22. "Governmental Approvals" shall mean any notices to, reports or other filings to be made with, or any Consents, registrations, permits or authorizations to be obtained from, any Governmental Authority.

23. "Green Attributes" shall mean any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of Output from the System, and its displacement of conventional energy generation, that is in effect as of the Effective Date or may come into effect in the future. Green Attributes include but are not limited to Renewable Energy Certificates, as well as: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions, such as REC Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the System, (ii) Environmental Financial Incentives, (iii) fuel-related subsidies or "tipping fees" that may be paid to Provider to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits or (iv) emission reduction credits encumbered or used by the System for compliance with local, state or federal operating and/or air quality Permits.

24. "Insolation" shall mean the amount of solar energy measured in watts per square meter (W/m^2) falling on a particular location during a specific time, as published by the National Renewable Energy Laboratory.

25. "Interconnection Agreement" shall mean an agreement entered into by and between District and the Distribution Utility which agreement shall provide for (i) each System to be interconnected with the Distribution Utility's electricity distribution system, (ii) for energy to flow from each System to such system and (iii) for energy to flow from such system to the Site, as applicable, under the provisions of all applicable Distribution Utility's tariffs.

26. "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended.

27. "kWac" shall mean kilowatt alternating current.

28. "kWdc" shall mean kilowatt direct current.

29. "kWhac" shall mean kilowatt-hour alternating current.

30. "Notice to Proceed" shall mean as defined in Section 6(B).

31. "Outage" shall mean as defined in Section 4(F).

32. "Output" shall mean the total quantity of all actual electrical power generated by the Solar Facilities as measured by a Meter in close proximity to the Delivery Point measured in kWhac. Output does not include the Green Attributes, Environmental Financial Incentives, RECs or REC Reporting Rights.

33. "Output Guarantee Rate" shall mean as defined in Exhibit B.

34. "Parallel Energy Services" shall mean to remain interconnected to and receive grid services.

35. "Permits" shall mean all government permits and approvals, regulatory or otherwise required for the construction, installation, completion and operation of the System.

36. "Person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

37. "Power Price" shall mean the per kWhac rate(s) as set forth on Exhibit B

38. "Project" shall have that meaning as set forth in the Recitals of this Agreement.

39. "RECs" or "Renewable Energy Certificates" shall mean renewable energy certificates related to and representing Green Attributes (also known as green tags, renewable energy credits, or tradable renewable certificates), which are tradable environmental commodities in the United States and represent 1 megawatt-hour (MWh) of electricity generated from an eligible renewable energy resource. These certificates can be sold and traded and the owner of the REC can claim to have purchased renewable energy.

40. "REC Reporting Rights" shall mean the right of a REC purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other Party at the REC purchaser's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

41. "Supervisory Control and Data Acquisition" or "SCADA" shall mean the system that monitors, communicates with, and controls devices throughout the System.

42. "Site" shall mean the portion of District's real property on which a System is to be located pursuant to this Agreement. See Exhibit F for additional details.

43. "Solar Facility" means each solar photovoltaic generation plant, together with all necessary inverters, ancillary equipment with a target installation size expressed in kWdc and kWac as shown in Exhibit F to be installed at the Site.

44. "Termination Value" shall equal the amount shown in Exhibit D for each Contract Year.

Exhibit B – Power Price and Output Guarantee Rate

Contract Period, Months	Contract Year	Power Price		Annual Production Estimate (kWh)	Output Guarantee Rate	
1-12	1	$0.00	/kWhac		$0.00	/kWhac
13-24	2	$0.00	/kWhac		$0.00	/kWhac
25-36	3	$0.00	/kWhac		$0.00	/kWhac
37-48	4	$0.00	/kWhac		$0.00	/kWhac
49-60	5	$0.00	/kWhac		$0.00	/kWhac
61-72	6	$0.00	/kWhac		$0.00	/kWhac
73-84	7	$0.00	/kWhac		$0.00	/kWhac
85-96	8	$0.00	/kWhac		$0.00	/kWhac
97-108	9	$0.00	/kWhac		$0.00	/kWhac
109-120	10	$0.00	/kWhac		$0.00	/kWhac
121-132	11	$0.00	/kWhac		$0.00	/kWhac
133-144	12	$0.00	/kWhac		$0.00	/kWhac
145-156	13	$0.00	/kWhac		$0.00	/kWhac
157-168	14	$0.00	/kWhac		$0.00	/kWhac
169-180	15	$0.00	/kWhac		$0.00	/kWhac
181-192	16	$0.00	/kWhac		$0.00	/kWhac
193-204	17	$0.00	/kWhac		$0.00	/kWhac
205-216	18	$0.00	/kWhac		$0.00	/kWhac
217-228	19	$0.00	/kWhac		$0.00	/kWhac
229-240	20	$0.00	/kWhac		$0.00	/kWhac
241-252	21	$0.00	/kWhac		$0.00	/kWhac
253-264	22	$0.00	/kWhac		$0.00	/kWhac
265-276	23	$0.00	/kWhac		$0.00	/kWhac
277-288	24	$0.00	/kWhac		$0.00	/kWhac
289-300	25	$0.00	/kWhac		$0.00	/kWhac

Exhibit C – REMOVED

Exhibit D – Termination Values

Contract Period, Months	Contract Year	Termination Value
1-12	1	$ 0.00
13-24	2	$ 0.00
25-36	3	$ 0.00
37-48	4	$ 0.00
49-60	5	$ 0.00
61-72	6	$ 0.00
73-84	7	$ 0.00
85-96	8	$ 0.00
97-108	9	$ 0.00
109-120	10	$ 0.00
121-132	11	$ 0.00
133-144	12	$ 0.00
145-156	13	$ 0.00
157-168	14	$ 0.00
169-180	15	$ 0.00
181-192	16	$ 0.00
193-204	17	$ 0.00
205-216	18	$ 0.00
217-228	19	$ 0.00
229-240	20	$ 0.00
241-252	21	$ 0.00
253-264	22	$ 0.00
265-276	23	$ 0.00
277-288	24	$ 0.00
289-300	25	$ 0.00

Exhibit E – Purchase Option Price

End of Contract Year	Purchase Option Price
1	$0.00
2	$0.00
3	$0.00
4	$0.00
5	$0.00
6	$0.00
7	$0.00
8	$0.00
9	$0.00
10	$0.00
11	$0.00
12	$0.00
13	$0.00
14	$0.00
15	$0.00
16	$0.00
17	$0.00
18	$0.00
19	$0.00
20	$0.00
21	$0.00
22	$0.00
23	$0.00
24	$0.00
25	$0.00

Exhibit F – Description of System and Site

1. **Solar Facility Size (kWDC / kWAC):**

2. **System Description: Attachment A to this Exhibit F contains one or more drawings or images depicting:**

   a. Premises;

   b. Proposed Solar Facility location;

   c. Access points needed for Provider to install and service the System (building access, electrical room, stairs etc.); and

   d. Construction assumptions (if any).

Attachment A

Exhibit G – General Conditions and Technical Specifications

[ATTACHED BEHIND THIS COVER PAGE]