

Attachment C

Power Purchase Agreement – New Cuyama
Aquatics Center

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	County of Santa Barbara 260 N. San Antonio Rd. Santa Barbara, CA 93110	Name and Address	SL Mission Solar I, LLC 575 Lexington Ave., Fl. 12 New York, NY 10022
Phone		Phone	(212) 286-1801
Fax		Fax	(646) 496-9172
E-mail		E-mail	assetmanagement@sunlightgeneral.com
Property Ownership	Purchaser owns the Property.	Additional Seller Information	Mailing Address for Seller: P.O. Box 8543 New York, NY 10150

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on specified parts of certain real property owned by the Purchaser as described in **Exhibit 2** (the “**Property**”). The specified area within the Property on which the System is to be located is referred to herein as the “**System Site**”, and may include one or more county buildings that will utilize electricity generated by the System (each a “**Facility**”).

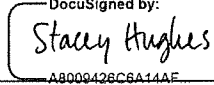
The exhibits listed below are incorporated by reference and made part of this Agreement.

<u>Exhibit 1</u>	Basic Terms and Conditions
<u>Exhibit 2</u>	System Description
<u>Exhibit 3</u>	General Terms and Conditions
<u>Exhibit 4</u>	Schedule of Termination Payments by Performance Period Year
<u>Exhibit 5</u>	Form of Easement Agreement
<u>Exhibit 6</u>	Form of Change Order

PLEASE SEE FOLLOWING PAGE

FOR PURCHASER'S SIGNATURES

Seller: SL Mission Solar I, LLC

DocuSigned by:

 Signature: _____
A8009428C6A14AE

Printed Name: Stacey L. Hughes
 Title: Authorized Signatory

September 4
 Date: _____, 2025

Purchaser: County of Santa Barbara

Signature: _____

Printed Name: Laura Capps

Title: Chair of the Board of Supervisors

Date: 9-16, 2025

ATTESTED:

Signature: _____

Printed Name: Mona Miyasoto

Title: County Executive Office, Clerk of the Board

RECOMMENDED FOR APPROVAL:

Signature: _____

Printed Name: Kirk Lagerquist

Title: Director, General Services Department

APPROVED AS TO FORM:

Rachel Van Mullem

Title: County Counsel, County of Santa Barbara

Signature: _____

Printed Name: Lauren Wideman

Title: Deputy County Counsel, County of Santa Barbara

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA

Title: Auditor-Controller, County of Santa Barbara

Signature: _____

Printed Name: Shawna Jorgensen

Title: Deputy Auditor-Controller, County of Santa Barbara

APPROVED AS TO FORM:

Signature: _____

Printed Name: Gregory Milligan, ARM

Title: Risk Manager

Exhibit 1
Basic Terms and Conditions

1. **Property Name:** Joseph Centeno Aquatics Center
2. **Property Location:** 290 Wasioja St. New Cuyama, CA 93254
3. **Initial Performance Period:** Twenty-five (25) years, beginning on the Commercial Operation Date.
4. **System Site:** The portion of the Property depicted in Exhibit 2, Attachment A.
5. **Facility:** Main panel board in electrical room within the building at the Property Location.
6. **Performance Period Extension Term(s):** Up to two (2) Performance Period Extension Terms of five (5) years each, as discussed in greater detail in the General Conditions attached as Exhibit 3 to the Agreement.
7. **Environmental Incentives:** All Environmental Incentives, including but not limited to the Internal Revenue Service Investment Tax Credit (ITC), accrue to Seller.
8. **Environmental Attributes:** All Environmental Attributes accrue to Purchaser. Seller shall transfer ownership of Environmental Attributes (e.g. Renewable Energy Credits, or RECs) to the Purchaser using the Western Renewable Energy Generation Information System (WREGIS), an online certificate-tracking system that records information about electricity generated, imported, and consumed within the Western Interconnection territory.
9. **Contract Price:**

Performance Period Year	\$/kWh
1	0.4290
2	0.4290
3	0.4290
4	0.4290
5	0.4290
6	0.4290
7	0.4290
8	0.4290
9	0.4290
10	0.4290
11	0.4290
12	0.4290
13	0.4290
14	0.4290
15	0.4290
16	0.4290
17	0.4290
18	0.4290
19	0.4290
20	0.4290
21	0.4290

22	0.4290
23	0.4290
24	0.4290
25	0.4290

10. Anticipated Commercial Operation Date: [December 31, 2026]

11. Purchaser Options to Purchase System. ☐ None ☒ or as set forth in Section 16(b).

12. Outside Commercial Operation Date: [June 30, 2028]

13. System Installation, Operation, Maintenance, Rebate Applications, and Paperwork Processing:

Includes:	Seller shall, at Seller's sole cost and expense, be responsible for the design, engineering, permitting, installation, monitoring, operation, maintenance, and rebate application and paperwork processing of the System pursuant to and in a manner consistent with provisions of this Agreement, including Sections 7(a) and 7(b) of Exhibit 3. Seller warrants that the above sole cost and expense described above includes payment for technical oversight and project management services provided by the county during construction, or "County Project Management Fee", equal to \$5,371. For the avoidance of doubt, the Contract Prices shown above are totally inclusive of the County Project Management Fee being paid by Seller to Purchaser. The County Project Management Fee shall be paid by Seller to Purchaser before any material physical work begins at the System Site. System installation to be performed by Endelos Construction, LLC ("Endelos") pursuant to an agreement between Seller and Endelos. Pursuant to Section 7(f) of Exhibit 3, Seller shall at all times be fully responsible for the performance of the work by Endelos under this Agreement and for ensuring that Endelos performs all work on the Site in accordance with the provisions of this Agreement. Seller is responsible for all obligations of Seller hereunder regardless of the performance of Endelos.
Excludes:	Unforeseen groundwork for excavation or circumvention of underground obstacles on the System Site to the extent necessary to install the System, and upgrades or repair work on Purchaser's utility electrical infrastructure on the Site to the extent necessary for the installation and operation of the System; provided, however, that neither the estimated or actual cost of such work exceeds \$10,000. In the event that such estimated or actual costs exceed \$10,000, Purchaser shall have the option to terminate this Agreement without penalty.

Exhibit 2
System Description

1. **Property:** 290 Wasioja St. New Cuyama, CA 93254
2. **System Site:** The portion of the Property depicted in Exhibit 2, Attachment A.
3. **System Size (DC kW):** 38.42
4. **Expected First Year Energy Production (kWh):** 56,701
5. **Expected Structure:** ☐ Ground Mount ☐ Roof Mount ☒ Parking Structure ☐ Other
6. **Expected Module(s):***

<u>Manufacturer/Model</u>	<u>Quantity</u>
Canadian Solar 565W BiHiKu CS6Y-565MB-AG bifacial dual glass monocrystalline photovoltaic module	68

7. **Expected Inverter(s):***

<u>Manufacturer/Model</u>	<u>Quantity</u>
SMA America Sunny Tripower 30-US-41 (31.3kWac)	1

8. **System Site and Preliminary System Layout:** See Exhibit 2, Attachment A
9. **Utility:** Pacific Gas & Electric
10. **Minimum Electricity Output Requirement:**

Seller shall guarantee a minimum System electricity output each year, which shall be 75% of the projected annual output based on the solar capacity and estimation of electricity output based on the design (see “Expected First Year Energy Production” set forth above) with a 1% per Performance Period year degradation rate (“Minimum Electricity Output Requirement”). The Minimum Electricity Output Requirement shall be calculated every five (5) years during the Performance Period commencing on the fifth anniversary of the Commercial Operation Date, comparing the total production for the prior five years on a weather-adjusted basis versus the minimum output projection to date (i.e. the sum of all expected energy production calculated for the 5-year period). The resulting credit to Purchaser, if applicable, will be calculated based on the differential of actual versus projected output multiplied by the calculated difference between the volumetric utility rate charged to Purchaser minus the Contract Price for that year of the Performance Period. If the actual output is higher than or equal to what is required by the Minimum Electricity Output Requirement, then no payment or credit is required. The first calculation of the Minimum Electricity Output Requirement, occurring on the fifth anniversary of the Commercial Operation Date, shall only include, account for, and be calculated upon the immediately preceding three (3) year-basis in order to account for initial-year setup of system operations.

* Modules and inverters to be finalized by Seller during the period beginning on the Effective Date and ending on the Commercial Operation Date (“**Development Period**”). During the Development Period, Seller may update the list of expected modules and inverters to be incorporated in the System, subject to County’s approval and requiring that this Exhibit be updated accordingly when finalized; provided, however, that changes in the “expected” equipment shall not result in any increase in the amount payable by County hereunder.

Exhibit 2
Attachment A:
System Site and Preliminary System Layout

The System layout, Delivery Point and access points set forth on this Attachment A to Exhibit 2 are preliminary and subject to change during the Development Period

An Aerial Photograph of the Property with blue overlay to indicate System Site.	See image below
Conceptual Drawing of the System	See image below
Delivery Point	Main panel board in electrical room within building located at 290 Wasioja St. New Cuyama, CA 93254
Access Points	Access to equipment via building's parking lots and access to the Delivery Point within the host building, accompanied by appropriate Purchaser staff



Exhibit 3
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Performance Period. Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on Attachment A to Exhibits 2 (the “Delivery Point”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for a Property from other sources if the Purchaser's electric requirements at the Property exceed the output of the System located on such Property. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. For the avoidance of doubt, Purchaser acknowledges any changes to the statewide Net Energy Metering (NEM) program after the Commercial Operation Date will not reduce its obligation to purchase all electric energy delivered by the System at the Delivery Point in accordance with the provisions of this Agreement.
3. **Term and Termination.**
 - a. **Initial Performance Period; Term.** This Agreement is effective commencing on the Effective Date and shall expire at the end of the Performance Period (the “Term”) unless earlier terminated in accordance with its terms. The initial performance period (the “Initial Performance Period”) for the purchase and sale of electrical energy hereunder shall commence on the Commercial Operation Date, and shall continue for the length of time specified in Exhibit 1 unless earlier terminated as provided for in this Agreement; provided, however, that in no event shall the Performance Period extend beyond the expiration or termination of the Term. The “Commercial Operation Date” for the System is the date on which the following conditions have been satisfied or waived by Buyer: (i) the System is mechanically complete, has been interconnected to the grid and is capable of delivering electric energy to the Delivery Point on a regular basis, (ii) all interconnection facilities and metering equipment required under this Agreement or any interconnection agreement with the Utility relating to the System have been installed, (iii) Seller has delivered to Buyer a certificate of a duly licensed engineer certifying that the conditions listed in clauses (i) and (ii) have been satisfied, (iv) all start-up testing required to be completed prior to initial operation under any interconnection agreement with the Utility relating to the System has been completed, and (v) Seller has notified Purchaser of same (“COD Notice”), which COD Notice includes copies of certificates of completion or similar documentation from Seller's contractor, and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Property (the “Utility”), as set forth on Exhibit 2. Such COD Notice shall be deemed effective as to the achievement of the Commercial Operation Date unless Purchaser reasonably objects in writing, with provision of supporting documentary evidence therefor, within five (5) days of the date of such COD Notice.
 - b. **Performance Period Extension Terms.** Prior to the end of the Initial Performance Period or of any applicable Performance Period Extension Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each such additional period, a “Performance Period Extension Term”, and collectively, together with the Initial Performance Period, the “Performance Period”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Performance Period or the then current Performance Period Extension Term, as applicable. The Party receiving the notice requesting a Performance Period Extension Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for a Performance Period Extension Term. If both Parties agree to a Performance Period Extension Term, the Performance Period Extension Term shall begin immediately upon the conclusion of the Initial Performance Period or the then current Performance Period Extension Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for a Performance Period Extension Term rejects or is deemed to reject the first Party's offer, this Agreement

shall terminate at the end of the Initial Performance Period (if the same has not been extended) or the then-current Performance Period Extension Term, as applicable.

4. **Billing and Payment.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “Contract Price”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Each monthly invoice shall state all of the following information: (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five-dollar (\$25) handling charge will be added to each invoice. Seller shall provide Purchaser with view-only access, via an online portal or other reasonable reporting interface designated by Seller, to production data recorded by the System meter. Such access is intended to permit Customer to monitor System performance and to review the basis for Monthly Invoices.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility’s electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Purchaser’s failure to perform its obligations in connection with this Agreement (provided that such failure of Purchaser was not caused by a breach by Seller of its obligations under this Agreement). For purposes of this **Section 4(d)**, “Taxes” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of energy under this Agreement, which shall be Seller’s responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Purchaser is the owner of all Environmental Attributes. Seller is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits. Purchaser’s purchase of electricity under this Agreement includes Environmental Attributes. Purchaser’s purchase of electricity under this Agreement does not include Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Seller shall cooperate with Purchaser in obtaining, securing, and transferring all Environmental Attributes related to the System, including by supplying the electric energy generated by such System in a manner necessary to qualify for such available Environmental Attributes. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Incentives and Tax Credits. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. With regard to the Environmental Attributes, Seller shall submit to Purchaser for approval all press releases regarding Seller’s supplying of solar or renewable energy and shall not submit for publication any such releases without the written approval of Purchaser in each instance.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System, and its displacement of conventional energy generation, including (a) 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; (b) 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 (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag 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. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“Environmental Incentives” means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“Governmental Authority” means any Federal, California state or local government within California, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission) with authority to bind a party at law.

“Tax Credits” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

- a. **Conditions to Seller’s Obligation.** Seller’s obligations to design, construct, install, operate, maintain and sell energy from the System under this Agreement are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction with respect to the System or System Site on or before the Condition Satisfaction Date:
 - i. Completion by Seller and at Seller’s sole expense of a physical inspection of the Property including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the System Site for the System (noting that Seller agrees to promptly provide copies of the results or findings of such due diligence work to Purchaser);
 - ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. **“Construction Agreement”** as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;
 - iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits with respect to such System;
 - iv. Seller’s receipt of all necessary zoning, land use and building permits;
 - v. Execution of all necessary agreements with the Utility for interconnection of the System to the electrical system on the Property and/or the Utility’s electric distribution system at the Delivery Point. For the avoidance of doubt, Seller shall manage the Interconnection process with the Utility under California Rule 21. Purchaser shall promptly execute all necessary interconnection documents, applications, and agreements as required by the Utility and shall reasonably cooperate and assist Seller in obtaining all approvals for interconnection, at Seller’s sole cost and expense; Purchaser shall be responsible for any Utility fees, charges, or requirements imposed due to Purchaser’s load profile, service configuration, or Facility characteristics unrelated to the System.
 - vi. Confirmation by Purchaser that California Environmental Quality Act (CEQA) review is either waived, not required, or if required, that Purchaser shall reimburse Seller for all costs related to such review.
 - vii. Confirmation that all conditions precedent to Seller’s obligations under Section 6(a) of that certain Solar Power Purchase Agreement with Purchaser relating to the solar photovoltaic system expected to be installed at 439 N. San Antonio Rd., Santa Barbara, CA 93110 (“Calle Real Campus”) have been or will be satisfied.
- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied with respect to the System or System Site by the Condition Satisfaction Date, or Seller determines that any such conditions will not be satisfied by the Condition Satisfaction Date, then Seller, no later than such Condition Satisfaction Date, shall deliver to Purchaser written notice detailing all such failed conditions (**“Condition Failure Notice”**) and the Parties will use good faith efforts to agree upon a new Condition Satisfaction Date; provided, however, that if no such agreement is

reached within ten (10) Business Days after the Condition Satisfaction Date, either Party may terminate this Agreement upon written notice to the other Party without further liability or obligation of either Party.

- c. **Commencement of Construction.** Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement and (B) a signed and notarized original copy of an easement agreement with respect to the Property, suitable for recording, substantially in the form attached hereto as **Exhibit 5** (the "**Easement Agreement**").
- d. **Conditions to Purchaser's Obligations.** Purchaser's obligations to purchase electric energy generated by the System under **this Agreement** are conditioned on the occurrence of the Commercial Operation Date for the System. If, following the Outside Commercial Operation Date, the Commercial Operation Date has not occurred, Purchaser may terminate this Agreement upon written notice to Seller at any time prior to the Commercial Operation Date, and such termination shall not be deemed a Purchaser Default Event.

7. **Seller's Rights and Obligations.**

- a. **Permits and Approvals.** Seller shall be responsible for obtaining, at its sole cost and expense:
 - i. all zoning, land use and building permits required to construct, install and operate the System; and
 - ii. all agreements and approvals from the Utility necessary in order to interconnect the System to a electrical system and/or the Utility's electric distribution system at the Delivery Point on the Property.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller, at Seller's sole cost and expense, in obtaining such agreements, permits and approvals.
- b. **Standard System Repair and Maintenance.** Seller shall be responsible for designing, constructing, installing, operating and maintaining the System at the System Site. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at Seller's sole cost and expense, except to the extent any such repairs or maintenance result from Purchaser's negligence, willful misconduct or breach of this Agreement and no way attributable to any act or omission by or on behalf of Seller or Endelos. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. If a System requires repairs for which Purchaser is responsible under this Section 7(b), Purchaser shall pay Seller for diagnosing and correcting the problem. Seller shall provide Purchaser with at least 48 hours' written notice prior to accessing the Property to make repairs and shall not access the Property other than in accordance with Purchaser's instructions, rules, and guidelines with respect to such Property.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to the inaccuracy of relevant information provided by Purchaser and reasonably relied upon by Seller, the pricing, schedule and other terms of this Agreement may be proportionally adjusted to compensate for such necessary extra work in excess of work required to be performed by Seller hereunder, provided that the Parties agree to such adjustment memorialized in writing in a Change Order in the form attached hereto as Exhibit 6 and executed by duly authorized representatives of each Party following the Parties' negotiation of such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from any of the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser and Seller shall each notify the other Party immediately upon such Party's discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to its Delivery Point upon 48 hours' prior written notice for the purpose of maintaining and repairing the System, and such suspension of service shall not constitute a breach of this Agreement; **provided**, however, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser; and provided further that no such interruption to or suspension of delivery of electricity from the System to the Delivery Point shall continue for longer than 120 consecutive hours, or for an aggregate of more than 240 hours in any given month during the Performance Period. In the event any such interruption or suspension exceeds one hundred twenty (120) consecutive hours, or aggregates more than two hundred forty (240) hours in any month during the Performance Period ("Excess Suspension Period"), Seller shall apply a fifty percent (50%) discount to the payments due for the number

of days of energy delivered immediately following re-energization of the System equal to the length of the Excess Suspension Period (e.g., if the Excess Suspension Period is five (5) days, then Purchaser shall receive a fifty percent (50%) discount on payments for the next five (5) days of energy delivered). Notwithstanding anything to the contrary, this "Suspension" of delivery of electricity from the System to its Delivery Point shall refer only to a voluntary election by Seller to suspend delivery to the Delivery Point and shall not include any interruption or reduction in such delivery caused by Force Majeure, equipment malfunction, utility curtailment, or any other cause beyond Seller's reasonable control.

- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide all work in accordance with this Agreement and applicable industry standards. Notwithstanding the foregoing, Seller shall at all times during the term of this Agreement be responsible for the work performed on behalf of Seller under this Agreement by its contractors and subcontractors. Seller shall provide a written list of contractors and subcontractors to Purchaser in advance of construction.

All contractors and subcontractors shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to those governing labor, safety, and prevailing wages. Seller shall ensure that each contractor and subcontractor maintains current workers' compensation and general liability insurance policies, naming the Purchaser as an additional insured where required. If required by Purchaser or applicable law for the specific work to be performed, Seller shall ensure that contractors and subcontractors complete background checks consistent with Buyer policies prior to commencing work.

- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services in connection with this Agreement and shall keep each Property free and clear of any liens related to such charges. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against a Property in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Property or that assure that any adverse judgment with respect to such lien will be promptly paid and released without affecting title to the Property.

- h. **NO WARRANTY.** EXCEPT FOR THE WARRANTIES BY SELLER EXPRESSLY STATED IN THIS AGREEMENT (THE "SELLER EXPRESS WARRANTIES"), NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY AND ALL SUCH WARRANTIES OR REMEDIES OTHER THAN THE SELLER EXPRESS WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. THE REMEDIES CONTAINED IN THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING LIMITATION SHALL IN NO EVENT A) AFFECT SELLER'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR B) APPLY TO DAMAGES OR LOSSES CAUSED BY THE GROSS NEGLIGENCE OF SELLER.

- i. **Insurance and Indemnification.** Seller shall at all times comply, and shall cause its contractors and subcontractor to comply, with the insurance and indemnification provisions contained in Sections 15 and 17 of this Agreement.

8. **Purchaser's Rights and Obligations.**

- a. **Easement.** Purchaser and Seller shall enter into an Easement Agreement, in form and substance set forth **Exhibit 5**, or other form agreed to by the Parties, pursuant to which Purchaser will grant to Seller certain rights to access and use the Property. Purchaser shall ensure that Seller's rights under the Easement Agreement and Seller's access to the Property in accordance with the Easement Agreement are preserved and protected. Purchaser shall not interfere with nor shall it permit any third parties to interfere with such rights or access. At the request of Seller, Purchaser shall execute a memorandum of Easement Agreement, and Seller may, at its sole cost and expense, record such memorandum of Easement Agreement with the appropriate land registry or recorder's office.
- b. **OSHA Compliance.** Seller shall ensure that all Occupational Safety and Health Act (OSHA) requirements and all other similar applicable safety laws and codes are adhered to in the performance of Seller's obligations under this Agreement.

- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain each Facility in good condition, operation, and repair at all times during the Term. Purchaser shall not cause a Facility to become disconnected from the Utility's electric distribution system or cause cessation of electric service to a Facility from the Utility other than to the extent reasonably necessary for repairs, maintenance, and other work on such Facility. Purchaser is fully responsible for the maintenance and repair of a Facility's electrical system (other than the System) and of all of Purchaser's equipment that utilizes the System's outputs. For clarity, Purchaser is not responsible for any maintenance or repair of the System except as expressly provided otherwise in this Agreement, including Section 7(b). Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to a Facility which would be reasonably likely to materially adversely affect the operation and maintenance of the System without prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and Purchaser shall give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of a System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost at the applicable then-current rates. All such alterations and repairs by or on behalf of Purchaser will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues from any Environmental Incentives that Seller would have received with respect to the System and the electric energy that would have been produced by the System during such disconnection or removal; and (iii) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to the electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b).
- e. **Outages.** Purchaser shall be permitted to be disconnected from the utility grid for a total of seventy-two (72) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of seventy-two (72) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Incentives that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 10(b).
- f. **Liens.** Purchaser shall not cause create, or incur any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a, Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Property and Facility. Purchaser will not conduct activities on, in or about the Property or a Facility that have a reasonable likelihood of causing damage, impairment or otherwise materially adversely affecting the System or the operation thereof.

- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause interference with the System's Insolation, including but not limited to tree or plant growth that shades the System. If Purchaser becomes aware of any activity or condition that diminishes, or would diminish, the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. Purchaser shall not take actions, or allow others to conduct activities, at the Premises or any adjoining property controlled by Purchaser, that cause shading or otherwise interfere with the proper operation of the System.
- i. **Data Line.** Purchaser shall provide Seller a high-speed internet data line or cellular modem during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4. Purchaser and Seller will work together in good faith to restore such data line or cellular modem connectivity after any period of malfunction or inactivity and shall provide reasonable assistance to the other party in such efforts.
- j. **Breakdown Notice.** Each of the Parties shall notify the other Party as promptly as reasonably practicable under the circumstances following such Party's discovery of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Each of the Parties shall notify the other Party immediately upon such Party's knowledge of (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. **Information.** In connection with Seller's design, engineering and construction of the System, Purchaser agrees to furnish such information and documents as to the Facility's physical configuration, planned use of the Facility and estimated electricity requirements as are reasonably requested by Seller for such purpose.

9. **[Reserved].**

10. **Relocation of System.**

- a. **System Relocation.** If Purchaser ceases to conduct business operations at the Property, or otherwise vacates the Property prior to the expiration of the Term, Purchaser may, but shall not be obligated to, provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make such cessation or vacation. In connection with any such substitution to which the Parties agree, the Parties shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; and (ii) the Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation and shall toll until the relocated System achieves commercial operation at such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, the Parties shall execute a new Easement Agreement which will grant rights in the real property to which the System is relocated, in form and content substantially similar to the Easement Agreement attached as Exhibit 5 to this Agreement. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.
- b. **Costs of Relocation.** Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller or its Financing Parties in connection with removal of the System from the System Site and installation and testing of the System at the substitute site and all applicable interconnection fees and expenses at the substitute facility, including costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the relocation; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; ; (iii) revenues from Environmental Incentives that Seller would have received with respect to electric energy that would have been produced by the System during the relocation; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Performance Period Year, on the estimated levels of production and, after the first Performance Period Year, based on actual operation of the System in the same period in the previous Performance Period Year,

unless Seller and Purchaser mutually agree to an alternative methodology. “**Performance Period Year**” means the twelve- month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Performance Period Year shall begin on the Commercial Operation Date.

- c. Adjustment for Insolation; Termination. Seller shall remove a System from a vacated Property prior to the termination of Purchaser’s ownership, lease or other rights to use such Property. With respect to the vacated Property, Seller shall not be responsible for any restoration or the costs thereof except to the extent Seller causes any damage to the Facility during the removal process. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to **Exhibit 1** such that Purchaser’s payments to Seller are the same as if the System were located at the original Facility, increased to the extent necessary to compensate Seller for reduced revenues from reduced Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller’s owners) receive as a result of the relocation. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration. Within sixty (60) days of the expiration or termination of this Agreement, unless terminated pursuant to a Purchaser Default Event or Purchaser’s exercise of its Option to Purchase, in which case this section shall not apply, Purchaser shall notify Seller in writing if it wishes the removal of a System from a Property (“System Removal Notice”). Seller shall, at its expense, remove all of its tangible property comprising the System from the Property on a mutually convenient date, but in no event later than 180 days after the written request by Seller. Such removal shall include the repair of any defect caused by the System as well as restoration of those portions of the Property that were directly modified by Seller for the purpose of System installation and operation, excluding ordinary wear and tear and any improvements that Purchaser reasonably deems may benefit the Property. Seller shall leave the Property in neat and clean order. If Seller fails to remove the System within 180 days after Purchaser’s delivery of such System Removal Notice, Purchaser shall have the right, at its option and at Seller’s sole expense, to remove the System. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry in California or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with the professional standards of the solar photovoltaic industry in California or the required standard of the Utility, and shall ensure the accuracy of the meter(s) during the Performance Period. Purchaser shall at all times during the Performance Period have continuous ability to access all meter(s) to independently read and confirm meter readings.

13. Default, Remedies and Damages.

- a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “**Defaulting Party**”, the other Party shall be deemed to be the “**Non-Defaulting Party**”, and each event of default shall be a “**Default Event**”:
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
 - ii. failure of a Party to perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice (“Default Notice”) from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days after the Default Notice) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion within 90 days of the date of the Default Notice and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
 - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

- iv. a Party (or, if a Party is a pass-through entity for tax purposes, any of such Party's owners) becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- v. with respect to Purchaser as the Defaulting Party, Purchaser (i) prevents Seller from installing a System in accordance with the provisions of this Agreement, other than as a result of any act or omission by or on behalf of Seller or any of its contractors, subcontractors, or Financing Parties in violation of this Agreement, or (ii) otherwise prevents the delivery of electric energy from the System, other than in accordance with the provisions of this Agreement. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days' prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- iii. If Purchaser terminates this Agreement prior to commencement of System installation, other than (a) in response to a Default Event, (b) Seller's failure to achieve the Commercial Operation Date for a System by the Outside Commercial Operation Date for such System, or (c) in exercise of any other express termination right afforded to Purchaser in this Agreement, a five thousand dollar (\$5,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.
- iv. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller is set forth on Exhibit 4.
 - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of (8.5%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, (4) [add Environmental Attributes]; and (5) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero¹.
 - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove all of the System. The Non-Defaulting Party

¹ If Purchaser is also taking the Environmental Attributes, the cost of replacement Environmental Attributes will also have to be taken into account.

shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations, Warranties and Covenants.

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver and perform its obligations under this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. **Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

- i. **License.** Purchaser has title to or a leasehold or other property interest in the Property. Purchaser has the full right, power and authority to enter into the Easement Agreement. Such Easement Agreement do not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or such Property and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Property. If Purchaser does not own the Property, Purchaser has obtained all required consents from the owner of the Property to grant the rights granted by Purchaser in the Easement Agreement and enter into and perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or a Facility is bound.
- iii. **[Reserved]**.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **Hazardous Substances.** There are no Hazardous Substances at, on, or below the Property.
- vi. **Authorizations.** Purchaser represents that all applicable public procedures, approvals, and authorizations have been obtained and complied with in connection with entry into and performance under this Agreement.

c. **Seller's Representations, Warranties and Covenants.** Seller represents and warrants to Purchaser the following as of the Effective Date and covenants that throughout the Term:

- i. **Licenses; Qualifications.** Seller has, or as applicable will ensure its contractors and subcontractors have, all licenses and qualifications required by law for the performance of Seller's obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller or the System is bound.
- iii. **[Reserved]**
- iv. **Conflict of Interest.** Seller represents that it has no knowledge of any interest that would materially impair its ability to perform its obligations under this Agreement or create a conflict not permitted by law with Purchaser's interests as a municipal entity under this Agreement. Seller covenants that Seller presently has

no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of Seller required to be performed under this Agreement. Seller further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Seller, and that, if Seller is a pass-through entity for tax purposes, Seller's owners shall not have any such interest. Seller must promptly disclose to Purchaser, in writing, each potential or actual conflict of interest. Purchaser retains the right to waive a conflict of interest disclosed by Seller if Purchaser determines it to be immaterial, and such waiver is only effective if provided by Purchaser to Seller in writing signed by Purchaser.

15. System and Facility Damage and Insurance.

a. System and Facility Damage.

- i. Seller's Obligations. If the **System** is damaged or destroyed other than by Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore such System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Performance Period or during any Performance Period Extension Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) for any given Performance Period Year, the amount set forth on Exhibit 4, Attachment A attached hereto.
- ii. Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition or pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$5,000,000 per occurrence and \$10,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
- ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 dollars per occurrence and \$2,000,000 dollars annual aggregate.
- c. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
- d. Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. Ownership; Option to Purchase.

- a. Ownership of System. Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, excluding all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, any Facility or the Property. Each of the Seller and Purchaser agree that the Seller is the beneficial owner of the Environmental Incentives and Tax

Credits. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Property on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against a Property which could reasonably be construed as prospectively attaching to a System as a fixture of the Property, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Property, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Property is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Property, and other Persons holding a similar interest in the Property. To the extent that Purchaser does not own the Property or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Property or Facility or termination of Purchaser's lease of the Property and/or Facility.

- b. **Option to Purchase.** After Performance Period Year 6, and each year thereafter, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the relevant value for the System listed in Exhibit 4, provided, however, that if such value listed in Exhibit 4 is greater than the Fair Market Value (defined in Paragraph c, below), then the purchase price for the System shall be the Fair Market Value. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Performance Period Year. Seller shall not provide any warranty or other guarantee regarding the performance of the System in connection with such purchase, provided, however, that Seller shall assign to Purchaser all manufacturers' warranties that are in effect as of such purchase, and which are assignable pursuant to their terms. Seller agrees to provide Purchaser with copies of manufacturers' warranties for modules, inverters, and racking within ninety (90) days of the Commercial Operation Date.
- c. **Determination of Fair Market Value.** "Fair Market Value" means the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology. The Fair Market Value shall be determined within thirty (30) days after Purchaser has exercised its option to Purchase the System. The Parties shall agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder other than with respect to liabilities or obligations with respect to the System cause, incurred, or occasioned prior the effective date of such purchase and assumption by Purchaser.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective Affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities caused by the sole negligence or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c). For purposes of this Agreement, "**Affiliate**" means with respect to a person or entity, any person or entity that (i) Controls, directly or indirectly, such person or entity; (ii) is Controlled, directly or indirectly, by such person or entity; or (iii) is under common Control with such person or entity. "**Control**" means, when used with respect to any person or entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise.

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Property of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, subcontractors, or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Property of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, subcontractors, or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Property or the Property generally or any deposit, spill or release of any Hazardous Substance.
 - i. **"Hazardous Substance"** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under California State or Federal laws applicable to the Property and pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

- d. **Limitations on Liability.**
 - i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Purchaser is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Seller causes Purchaser to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

 - ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 26 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed two times the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. Force Majeure.

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and not arising out of any act or omission by or on behalf of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared);

sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fires including wildfires and any related utility power outages or shutoffs; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary due to the continuation of such Force Majeure event; provided, however, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt written notice reasonably describing the event and the extent to which such affected Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than the time during which such affected Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of and during the occurrence of such Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts a Party's ability to make payment required under this Agreement, unless the cause of such inability to make payment is an event that would otherwise constitute a Force Majeure event as described above.
- c. If a Force Majeure event continues for a period of more than 30 consecutive calendar days, or occurs for an aggregate of 30 days or more during any 12-month period during the Term, and prevents performance by a Party of any of its obligations in any material respect hereunder, then at any time during the continuation of such Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

- a. Assignment. Except as expressly provided otherwise in this Agreement, this Agreement may not be assigned in whole or in part, directly or indirectly, by operation of law or otherwise, by any Party without the prior written consent of the other Party. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to a subsidiary, or (iii) other Affiliate of Seller; provided that Seller may be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee; provided further that any such assignment, pledge, mortgage, or other transfer of the System or any of Seller's rights and/or obligations under this Agreement shall not result in any change to Purchaser's rights and obligations under this Agreement; provided further that Seller promptly provides written notice to County of, and in no event later than three (3) business days after, any such assignment, pledge, mortgage, or other transfer of the System or any of Seller's rights or obligations under this Agreement without the prior written consent of Purchaser. Purchaser's consent to any other assignment shall not be withheld if Purchaser has been provided with reasonable proof to the reasonable satisfaction of Purchaser that the proposed assignee (1) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement, (2) has the financial capability, licenses, permits, and qualifications to operate and maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement, and (3) does not have any actual or potential conflict of interest as described in Section 15.c.iv, above. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment

pursuant to Section 19(a)(i)-(ii) or otherwise in connection with financing the System, Purchaser agrees to execute any consent, estoppel or acknowledgement as may be reasonably requested by Financing Parties, each in form and substance reasonably acceptable to such Financing Parties; provided that in responding to any such request, Purchaser will have no obligation to provide any consent, or enter into any agreement, that includes terms that adversely affect Purchaser's rights, benefits, risks or obligations under this Agreement.

- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its Affiliates by Financing Parties, that such Financing Parties may require that Seller or its Affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"), provided that such Successor Provider performs such services in accordance with the terms of this Agreement; provided further that Seller promptly provides written notice to County of the identity of, and all information requested by County regarding, each such Successor Provider upon each such appointment. .

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information that is expressly designated as such ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and Affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, (iv) constitutes a "public record" under the California Public Records Act or the Freedom of Information Act, or (v) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure.

- 21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the State of California shall govern this Agreement without giving effect to conflict of laws principles.
- b. [Reserved]
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary to effect the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within fifteen (15) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of

this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with all Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid by a court of competent jurisdiction, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. This Agreement may be executed electronically and in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. The transaction contemplated under this Agreement constitutes a ‘forward contract’ within the meaning of the United States Bankruptcy code and the Parties further acknowledge and agree that each Party is a ‘forward contract merchant’ within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

23. **Amendment to PPA Pricing.** Under certain circumstances arising before the Commercial Operation Date, the Parties may request a change to the Contract Price and scope of work (e.g., a request by Purchaser to accommodate a battery system addition to the System(s); request by Purchaser for Seller to pay certain consulting fees associated with this project and Agreement; discovery of unexpected site conditions at one or more location). In such case, the requesting Party shall propose a Change Order in form attached hereto as **Exhibit 6** reflecting such requested changes for the other Party’s approval, and the Parties shall make a good faith effort to address the cost or payment via a mutually agreed-upon Change Order.

24. **COMPLIANCE WITH LAW:** Seller shall keep fully informed of and in the performance by and on behalf of Seller hereunder, shall at all times observe and comply with, and cause all agents, employees, contractors and subcontractors to observe and comply with all laws, statutes, ordinances, decrees, orders, and regulations which do or may affect such performance, the materials used therein, or persons engaged in connection therewith, and all such orders of bodies and tribunals having any jurisdiction over same (collectively, “Applicable Laws”). Without limiting the generality of the foregoing, Seller represents and warrants that, with respect to the performance of its obligations under this Agreement, or the development, installation, construction, operation, and maintenance of the Facility, Seller and all subcontractors and other persons engaged by Seller to perform any work hereunder have complied and shall continue to comply with: (a) the California Building Code and local building codes; (b) utility interconnection regulations; (c) the Americans with Disabilities Act (ADA), including striping, signage, and path-of-travel requirements; (d) all applicable provisions of the California Labor Code, including but not limited to the obligation to pay not less than the general prevailing rate of per diem wages and rates for holiday and overtime work, as determined by the California Department of Industrial Relations; and (e) all applicable federal, state, and local laws governing copyrights, patents, and trademarks. If Seller has reason to believe that any provision of this Agreement conflicts with any Applicable Law(s), the Seller shall immediately report same to the County Representative in writing.

25. **RECORDS.** Seller shall maintain records reasonably necessary to demonstrate compliance with its obligations under this Agreement (collectively, the “Records”).

26. **EXCAVATIONS:** Before any pavement resurfacing, displacement, or excavation of the ground that may be required in connection with the performance of this Agreement, Seller shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or by such other means as may be required; shall conform to all requirements of Sections 4215 through 4217 of the Government Code regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by Purchaser of any obligation required of the Purchaser under the Government Code. There shall be no performance under this Agreement by either party hereto unless and until Seller complies with all of the foregoing provisions of this Sections 26 and notifies the Purchaser in writing confirming such compliance.

Exhibit 4

Schedule of Termination Payments by Performance Period Year

System:	Joseph Centeno Aquatics Center
If Termination Occurs in Year	Termination Payment
1	\$297,257
2	\$282,394
3	\$268,274
4	\$254,860
5	\$242,117
6	\$230,012
7	\$218,511
8	\$207,585
9	\$197,206
10	\$187,346
11	\$168,611
12	\$151,750
13	\$136,575
14	\$122,918
15	\$110,626
16	\$99,563
17	\$89,607
18	\$80,646
19	\$72,582
20	\$65,323
21	\$58,791
22	\$52,912
23	\$47,621
24	\$42,859
25	\$38,573

End of Exhibit 4

Exhibit 5
Easement Agreement²

This EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 20____ (the “**Effective Date**”), by and between _____ (“**Grantor**”) and _____ (“**Grantee**”).

Recitals

A. Grantor is the owner of that certain real property and improvements thereon located at [_____], known as Assessor’s Parcel Number [_____], and more particularly described by metes and bounds on **Attachment A** attached hereto and incorporated herein (the “**Property**”).

B. Grantor and Grantee entered into a certain Solar Power Purchase Agreement (the “**Solar Agreement**”) pursuant to which the Grantee intends to design, construct, install, operate and maintain a certain solar photovoltaic system (the “**System**”) on a portion of the Property identified on **Attachment B** attached hereto and incorporated herein (the “**System Site**”) for the purpose of providing electric energy to [_____] located on the Property (each, a “**Facility**”).

C. Grantor desires to grant to Grantee the rights described herein for the purposes of designing, installing, operating, maintaining and removing the System on and from the Property.

Agreement

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth below, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged and confirmed by Grantor, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants and conveys unto Grantee, its successors and assigns a non-exclusive easement during the Term (defined below), on, across, over, under and above the portions of the Property identified as the easement area on **Attachment C** attached hereto and incorporated herein (the “**Easement Area**”) in order to (i) construct, install, alter, protect, repair, maintain, replace, operate, maintain and remove the System, including any related interconnection equipment and any facilities or equipment appurtenant thereto in accordance with the Solar Agreement, (ii) perform all of Grantee’s obligations and enforce all of Grantee’s rights set forth in the Solar Agreement; and (iii) install, use and maintain electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser’s (as defined in the Solar Agreement) electric system at the Facility, to the local utility’s electric distribution systems, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System (“**Easement**”). Grantor also hereby grants and conveys unto Grantee all other easements across, over, under and above the Property as reasonably necessary to provide access to and services reasonably required for Grantee’s performance under the Solar Agreement. The easements granted hereunder shall run with and burden the Property for the term of this Agreement.
2. **Term.** This Agreement shall be for a period commencing on the Effective Date and expiring on the date that is the earlier of (a): one hundred twenty (120) days following expiration or termination of the Solar Agreement, and (b) termination of the Solar Agreement due to default by Grantee thereunder (the “**Term**”). No delay or interruption by Grantee in the use or enjoyment of any right or the Easement hereby granted shall result in the loss, limitation or abandonment of any such right or of the Easement.
3. **Obstructions.** In addition to the rights afforded Grantee under the Solar Agreement, Grantee may from time to time remove structures, trees, bushes, or other obstructions within such portions of the Easement Area, and may level and grade such portions of the Easement Area, to the extent reasonably necessary to carry out the purposes set forth herein and Grantee’s obligations under the Solar Agreement; provided, however, that Grantee first obtains the prior written consent of Grantor to such removal, leveling or grading in each instance, such consent not to be unreasonably withheld, delayed or conditioned. Grantor covenants for itself, its heirs, successors and assigns that:
 - a. Grantor will not build or place, or allow to be built or placed, any structure or obstruction of any kind within such portions of the System Site that obstructs the insolation of the System; and
 - b. if such a structure or obstruction is built or placed within any portion of the System Site that obstructs the insolation of the System, Grantor will remove the same at the request of the Grantee at no cost to the Grantee.

² If Grantor and Purchaser are not the same Person, a three-party agreement will be necessary between the Purchaser, the Grantor and the Grantee.

Grantee may erect a fence on the System Site in order to exclude others, other than Grantor, from accessing the System Site, subject to the prior written consent of Grantor in each instance, such consent not to be unreasonably withheld, delayed or conditioned.

4. **Reservation of Rights.** Grantor reserves the right to use and authorize others to use the Property and the Facility in any manner not inconsistent with, or which will not unreasonably interfere with, the rights granted herein, provided, however, that Grantor shall not, nor shall permit others to, adversely affect the System, including any related interconnection equipment without prior written approval of the Grantee, other than in the event of an emergency and in accordance with the provisions of the Solar Agreement.
5. **Title.** Grantor represents and warrants to Grantee that (a) Grantor holds fee simple title to the Property, free and clear of all liens and any other encumbrances, and (b) no lien or other encumbrance to which the Property is subject would reasonably be expected to adversely impact Grantee's rights hereunder or under the Solar Agreement. Grantor further represents and warrants to Grantee that Grantor has the right to execute and deliver this Agreement and to grant to Grantee the Easement and other rights hereunder, and that such grant does not, and will not, violate or breach Grantor's organizational documents (as applicable), any law or regulation, or any contract, agreement or arrangement to which Grantor is a party or by or to which any of Grantor's assets or properties, including the Property is bound or subject. This Agreement shall be subject and subordinate to any mortgage(s) now or subsequently granted by Grantor and recorded against the Property and to any renewals, modifications, refinancings and extensions thereof (each, a "**Grantor Mortgage**"), provided that the holder of any such Grantor Mortgage has executed and delivered to Grantee a non-disturbance agreement, in recordable form and substance acceptable to Grantee, under the terms of which the holder of the Grantor Mortgage covenants and agrees to and with Grantee not to disturb Grantee in its enjoyment of its rights hereunder. This clause shall be self-operative, but upon the written request of any holder of a Grantor Mortgage, Grantee shall execute a commercially reasonable subordination agreement in favor of the holder of the Grantor Mortgage. As an alternative to the foregoing, a holder of any Grantor Mortgage shall have the right at any time to subordinate its Grantor Mortgage to this Agreement.
6. **Recordation; Possession.** This Agreement may be recorded against the Property by Grantee at Grantee's sole cost and expense. Grantor covenants and agrees, for itself and its assigns and successors, that the Grantee shall be entitled to exercise its rights under this Agreement upon execution and delivery of this Agreement by all of the Parties hereto, whether or not this Agreement is recorded.
7. **Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of California, without regard to conflicts of law principles.
8. **Severability.** All provisions of this Agreement are severable in the event that a court of competent jurisdiction finds any provision to be invalid or unenforceable, and such invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.
9. **Binding Effect; Successors and Assigns.** Grantee shall have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and interests arising in this Agreement in accordance with the terms of the Solar Agreement. Without limiting the generality of the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and assigns. This Agreement may be amended, modified or terminated only by written instrument, executed and acknowledged by the Parties hereto.
10. **Headings.** The headings used herein are for convenience only and are not to be used in interpreting this Agreement.
11. **Entire Agreement.** This Agreement and the Solar Agreement contain the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements with respect to the matters described herein.
12. **Amendments; Acknowledgments.** Grantor shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee's lender, any assignee of rights under this Agreement, or the lender of any assignee hereunder.
13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

[signature pages follow]

Exhibit 5
Attachment A
Description of the Property

Joseph Centeno Aquatics Center, 290 Wasioja St. New Cuyama, CA 93254

Exhibit 5
Attachment B
Description of the System Site

See image below:



Exhibit 5
Attachment C
Description of the Easement Area

All necessary paths of ingress and egress to the Property along with underground conduit runs to and from equipment pads to the Delivery Point (Main panel board in electrical room within building located at 290 Wasioja St. New Cuyama, CA 93254)

IN WITNESS WHEREOF, this Easement Agreement has been executed and delivered under seal on this _____ day of _____, 20__.

GRANTOR:

By: _____
Print Name: _____
Title: _____

GRANTEE:

By: _____
Print Name: _____
Title: _____

/FOR FORM PURPOSES ONLY – DO NOT EXECUTE/

STATE OF _____ :

ss.

COUNTY OF _____ :

Be it Remembered, that on this ____ day of _____, 20__, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged him/herself to be _____ of _____, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission expires:

/FOR FORM PURPOSES ONLY – DO NOT EXECUTE/

STATE OF _____:

ss.

COUNTY OF _____:

Be it Remembered, that on this ____ day of _____, 20__, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged him/herself to be _____ of _____, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission expires:

[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]

Exhibit 6**Form of Change Order****CHANGE ORDER****Change Order No. []**

This Change Order No. [] (this “**Change Order**”) is effective as of the date this Change Order has been last signed by a party (the “Effective Date”), by and between [] (“**Purchaser**”) and [] (“**Seller**”), for the purpose of amending and modifying the Contract Price and/or scope of work as defined and/or provided for in the Solar Power Purchase Agreement between Seller and Purchaser, dated [] (the “**Agreement**”), or other provisions thereof.

1.0 Purpose of Change Order.

1.1. The general purpose of this Change Order is to: []

1.2. The capitalized terms used in this Change Order, unless otherwise defined herein Change Order, shall have the meanings given to them in the Agreement. This Change Order is executed in connection with, and is deemed to be a part of, the Agreement. Wherever the terms of this Change Order and the terms of the Agreement are in conflict, the terms of this Change Order shall govern and control. The exhibits attached hereto (if any) are incorporated herein by reference and shall be deemed a part of this Change Order and a part of the Agreement.

2.0 Changes to Agreement Provisions.

The Agreement is hereby amended as follows: []

3.0 Payment Schedule.

As a result of the changes described in Section 2 above, the Contract Price is revised as follows:

Performance Period Year	\$/kWh
1	
2	
3	
4	
5	
6	
7	
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11	
12	
13	
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25	

4.0 **Schedule.**

As a result of the changes described in Section 2 above, the schedule for performance is revised as follows:

Description	Date
[e.g., Outside Commercial Operation Date]	

5.0 **Miscellaneous Provisions.**

5.1. The Parties' signature on, and execution of, this Change Order shall conclusively establish their full agreement regarding the change(s) described herein and shall conclusively resolve all claims, demands, impacts, requests, issues and disputes which were, have, or could be raised by either Party in connection with such change(s).

5.2. Except as otherwise expressly provided herein, all the terms, conditions, covenants, agreements, and understandings contained in the Agreement shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Party's authorized representative has executed below.

PURCHASER

[PURCHASER]

By: _____

Name:

Title:

Date:

SELLER

[SELLER]

By: _____

Name:

Title:

Date:

End of Exhibit 6