

## Amended and Restated Energy Services Agreement

This Amended and Restated Energy Services Agreement (this “**Agreement**”) is entered into by and between County Sanitation District No. 20 of Los Angeles County, a county sanitation district organized and operating pursuant to the County Sanitation District Act, California Health and Safety Code Section 7400, et seq. (“**District**”) (DIR Registration Number 100010096), and Pacifico Power Palmdale 01 LLC, a Delaware limited liability company, (“**Service Provider**”) and together with District, each a “**Party**” and collectively, the “**Parties**”) (DIR Registration Number PW-LR-1001138146), as of the date signed by the last Party below (the “**New Effective Date**”).

- A. This Agreement sets forth the terms and conditions of the purchase and sale of generated electric energy from the solar photovoltaic panels described in Exhibit 2 (the “**Solar System**”) (DIR Project Number \_\_\_\_\_) and the services related to the battery energy storage system described in Exhibit 2 (the “**BESS**”) and collectively with the Solar System and Electrical Appurtenances (defined below), the “**System**”) and installed at the District’s Palmdale Water Reclamation Plant, located at 39300 30<sup>th</sup> St E, Palmdale, CA 93550 (the “**Facility**”).
- B. The District and Pacifico Power LLC entered into that certain Project Development and Non-Disclosure Agreement, dated as of March 10, 2022, as amended by that certain First Amendment to Project Development and Non-Disclosure Agreement, dated as of December 8, 2022 (as amended, the “**Development Agreement**”). The Development Agreement has expired by its own terms, and the parties thereto have no further obligations to one another thereunder. However, the Parties are proceeding in good faith with this Agreement under the terms of the Development Agreement.
- C. The System will be constructed, operated, and maintained by Service Provider on a portion of the Facility to be leased to Service Provider by the District (the “**Leased Premises**”), as depicted on Exhibit 2 Attachment A. The Leased Premises include an Exclusive Use Area and a Non-Exclusive Use Area (defined below) and are owned in fee by the District.
- D. Service Provider will have the non-exclusive right to install, operate, maintain, repair, and replace certain electrical conduits, duct banks, cables, relays, switchgears, and appurtenances (collectively “**Electrical Appurtenances**”) in, on, over, under, across, and through a portion of the Facility as depicted on Exhibit 2 Attachment A (the “**Non-Exclusive Use Area**”) pursuant to the terms and conditions of this Agreement and pursuant to a Lease Agreement from the District to Service Provider in form and content agreed to by the Parties (the “**Lease Agreement**”).
- E. Service Provider and the District entered into that certain Energy Services Agreement (the “**Original Agreement**”), dated as of February 8, 2024 (the “**Effective Date**”), and the Parties now agree to amend and restate the Original Agreement in its entirety as set forth herein. The Parties acknowledge that this Agreement supersedes the Original Agreement in all respects, that the Original Agreement is null and void and of no further effect as of the date hereof, and neither Party has or shall have any obligations or liabilities outstanding or arising under the Original Agreement.

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>	Intentionally Omitted
<u>Exhibit 5</u>	Solar Performance Guaranty
<u>Exhibit 6</u>	Battery Performance Guaranty
<u>Exhibit 7</u>	Technical Specifications
<u>Exhibit 8</u>	Prevailing Wage Requirements

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

**Service Provider: Pacifico Power Palmdale 01 LLC**

Signature  \_\_\_\_\_  
Printed Name: Kevin Pratt  
Title: President, Pacifico Power LLC

Date September 26, 2024

**Client: County Sanitation District No. 20 of Los Angeles County**

Signature \_\_\_\_\_  
Chairperson, Board of Directors

ATTEST:

By \_\_\_\_\_  
Secretary to the Board

APPROVED AS TO FORM:  
LEWIS, BRISBOIS, BISGAARD & SMITH LLP

By \_\_\_\_\_  
District Counsel

**Exhibit 1**  
**Basic Terms and Conditions**

1. **Defined Terms:** Capitalized terms not otherwise defined in this **Exhibit 1** shall have the respective meanings ascribed to such terms in **Exhibit 3**.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date.
3. **Additional Term:** Up to 1 additional term of five (5) years beginning on the expiration of the Initial Term, in accordance with **Exhibit 3, Section 3(b)**.
4. **Environmental Incentives and Environment Attributes:** Service Provider acknowledges and agrees that all current and future Environmental Attributes shall accrue to District.

5. **Contract Price:**

Contract Year	\$/kWh (Contract Price)
1	0.0900
2	0.0900
3	0.0900
4	0.0900
5	0.0900
6	0.0900
7	0.0900
8	0.0900
9	0.0900
10	0.0900
11	0.0900
12	0.0900
13	0.0900
14	0.0900
15	0.0900
16	0.0900
17	0.0900
18	0.0900
19	0.0900
20	0.0900
21	0.0900
22	0.0900
23	0.0900
24	0.0900
25	0.0900

“**Contract 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 Contract Year shall begin on the Commercial Operation Date.

6. **Condition Satisfaction Date:** [October 31, 2025].

- a. In the event that (a) the District’s Board of Directors does not adopt or certify the California Environmental Quality Act (CEQA) documents for the System and (b) the County of Los Angeles does not approve the Site Plan Review application to allow construction of the System, this Agreement shall terminate immediately, automatically, and unconditionally, on the Condition Satisfaction Date. In the event of the failure of either of the conditions precedent identified above in this Section 6(a), the District shall pay the sum of \$33,871.25 to

Service Provider for third-party project development costs incurred by Service Provider (the “**Development Payment**”), and the District shall have no other obligations to pay any other amounts to Service Provider. Service Provider shall cooperate with the District in connection with District’s efforts to obtain the County’s approval of the Site Plan Review application and promptly respond to any requests for information or documentation from the District or the County of Los Angeles.

7. **Anticipated Commercial Operation Date:** October 31, 2026 (for informational purposes only)

8. **System Installation:** The Contract Price is based on the following assumptions:

Includes:	<p><input checked="" type="checkbox"/> Design, engineering, permitting, installation, monitoring, maintenance, operation, rebate application and paperwork processing of the System.</p> <p><input type="checkbox"/> Fencing.</p> <p><input checked="" type="checkbox"/> Standard site leveling, grubbing and scraping.</p> <p><input checked="" type="checkbox"/> Technical Specifications found in <b><u>Exhibit 7</u></b></p> <p><input type="checkbox"/> Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stonework, and any lighting not required to meet the minimum code compliance).</p> <p><input type="checkbox"/> Removal of existing lighting, light poles, or concrete light post bases.</p> <p><input checked="" type="checkbox"/> Interconnection costs for the System will not exceed thirty thousand dollars (\$30,000) in the aggregate.</p> <p><input checked="" type="checkbox"/> State or utility rebate, if any. Describe: Self Generation Incentive Program of \$367,200</p> <p><input checked="" type="checkbox"/> Investment Tax Credit of 40% (30% base and 10% Inflation Reduction Act of 2022 Energy Communities bonuses)</p> <p><input checked="" type="checkbox"/> Driven piles for racking system with refusal rate not to exceed 3%</p> <p><input checked="" type="checkbox"/> Payment bonds, performance bond(s).</p> <p><input checked="" type="checkbox"/> Prevailing Wage Requirements and DIR Registration Of Contractor: The work under this Agreement constitutes a "public work" within the meaning of the California Labor Code (the "Labor Code") section 1720 and is subject to the prevailing wage laws applicable to the locality in which the work is to be performed. See <b><u>Exhibit 8</u></b>.</p> <p><input checked="" type="checkbox"/> Apprenticeship programs as required by the Inflation Reduction Act of 2022</p> <p><input checked="" type="checkbox"/> Building Permits</p> <p><input checked="" type="checkbox"/> Internal fire roads within the settling pond</p>
Excludes:	<p>Unforeseen waterwork or groundwork (including, but not limited to, excavation/circumvention of underground obstacles).</p> <p>Upgrades or repair to the Facility or utility electrical infrastructure, including ADA upgrades.</p>

	<p>Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).</p> <p>Changes in System design caused by any inaccuracy or ambiguity in information provided by District, including information regarding District's energy use, the Leased Premises and the Facility, including building plans and specifications.</p> <p>CEQA compliance, Conditional Use Permit / Site Plan Review</p>
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**9. Termination Payment Schedule for District Default Event** (in accordance with **Exhibit 3, Section 12(b)(iii)(A)**):

<b>Contract Year</b>	<b>Termination Payment (\$)</b>
1	\$20,760,843
2	\$20,794,138
3	\$20,572,073
4	\$20,340,487
5	\$20,100,248
6	\$7,486,878
7	\$7,222,665
8	\$6,985,451
9	\$6,739,179
10	\$6,480,561
11	\$6,210,069
12	\$5,926,877
13	\$5,631,218
14	\$5,319,995
15	\$4,993,233
16	\$4,649,841
17	\$4,289,504
18	\$3,909,334
19	\$3,508,780
20	\$3,086,403
21	\$2,641,185
22	\$2,170,461
23	\$1,672,943
24	\$1,146,727
25	\$589,886

**10. Termination Payment Schedule for Service Provider Default Event** (in accordance with **Exhibit 3, Section 12(b)(iii)(B)**):

<b>Contract Year</b>	<b>Termination Payment (\$)</b>
1	\$427,192
2	\$684,604
3	\$882,320
4	\$1,089,542
5	\$1,306,774
6	\$1,534,547
7	\$1,773,420

8	\$2,023,979
9	\$2,286,843
10	\$2,562,660
11	\$2,852,113
12	\$3,155,921
13	\$3,474,837
14	\$3,809,655
15	\$4,161,209
16	\$4,530,375
17	\$4,918,073
18	\$5,325,271
19	\$5,265,163
20	\$5,199,810
21	\$5,128,858
22	\$5,539,751
23	\$5,971,093
24	\$4,126,779
25	\$2,138,801

**11. Agreement Basis.** This Agreement is being entered into on a take or pay basis. District shall purchase from Service Provider, and Service Provider shall sell to District, all of the electric energy generated by the System, or any portion thereof, and certain energy storage services associated with the System during the Initial Term and any Additional Term. Service Provider may utilize the energy storage portion of the System to participate in energy market programs; provided that any revenues received by Service Provider with respect to such energy market program participation shall be shared with District as mutually agreed by the Parties.

**12. Purchase Option Price:**

<b>End of Contract Year</b>	<b>Purchase Option Price</b>
6 <sup>th</sup>	\$7,486,878
10 <sup>th</sup>	\$6,480,561
15	\$4,993,233

**End of Exhibit 1**

**Exhibit 2**  
**System Description**

1. **System Location:** Palmdale Water Reclamation Plant, 39300 30<sup>th</sup> St E, Palmdale, CA 93550
2. **System Description (Expected Structure, Etc.):**
  - a. Racking: Make: ATI or Equivalent      Model: Duratrack HZ3      Count: NA
  - b. Modules: Make: ZNShine      Model: ZXM7-UHLDD144-580 (580W)      Count: 6916
  - c. Inverters: Make: SMA or equivalent      Model: Sunny Highpower PEAK3 150-US      Count: 22
  - d. Meter: Make: Eaton      Model: TBD      Count: 3
  - e. Monitoring System: Make: Also Energy      Model: Powertrack      Count: 1
  - f. Battery System: Make: Tesla      Model: Megapack 2XL 4-Hour, EC12(1848844-XX-Y)      Count: 1
3. **Delivery Point and Leased Premises:** See **Exhibit 2, Attachment A**, which contains one or more drawings or images depicting:
  - a. Leased Premises, including the improvements (as applicable);
  - b. Delivery point for electricity generated by the System (the “**Delivery Point**”);
  - c. Access points needed for Service Provider to install and service the System (building access, electrical room, stairs etc.); and
  - d. Construction assumptions (if any).
4. **Facility and System Layout:** See **Exhibit 2, Attachment A**.
5. **Performance Guaranties:** Service Provider shall provide a guaranty of the performance of the System over the Term in accordance with the Solar Performance Guaranty, which is attached hereto as **Exhibit 5**, and the Battery Performance Guaranty, which is attached hereto as **Exhibit 6**.
6. **Utility:** Southern California Edison

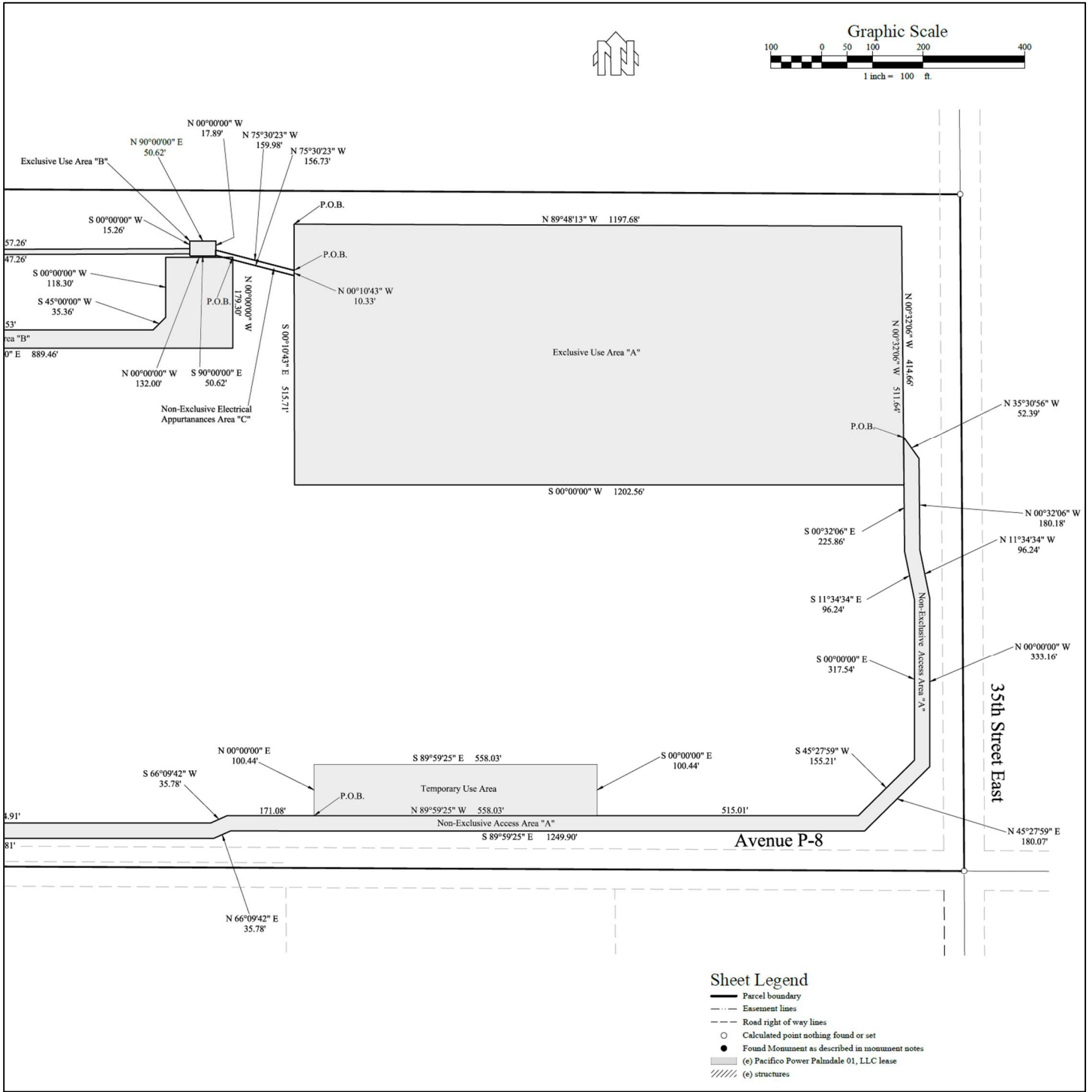
**Exhibit 2**  
**Attachment A:**  
Facility and System Layout

Depiction of Facility including Leased Premises (Exclusive Use and Non-Exclusive Use Areas)	See below
Conceptual Drawing of the System	See below
Delivery Point	12 kV Switchboard 2
Access Points	To be confirmed after Effective Date and prior to commencement of construction of the System

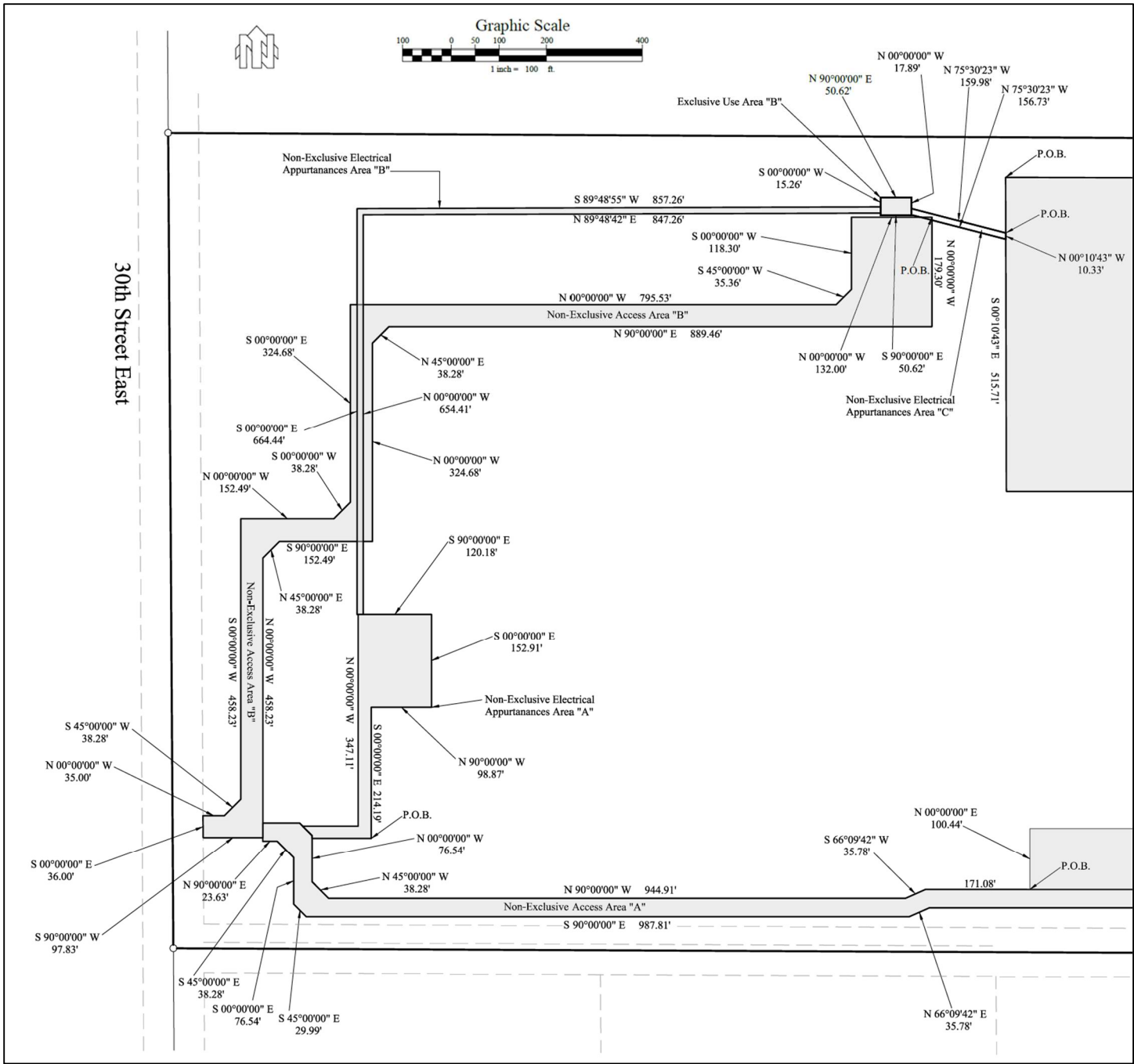
**Preliminary Site Plan:** Please find the preliminary site plan on the next page. This preliminary site plan will be finalized by Service Provider immediately after the execution of this Agreement to the reasonable satisfaction of the District; provided that, the System is subject to obtaining the relevant environmental permits from relevant Governmental Authorities.



# Depiction of Facility including Leased Premises (Exclusive Use and Non-Exclusive Use Areas)



<p><b>Title Company</b> First American Title Insurance Co. 550 Mansueth Avenue, Suite 401 Harrison, New York 10528</p>	<p><b>Owner</b> County Sanitation District 20 Los Angeles County 39500 30th Street E. Palmdale, California 93550</p>	<p><b>Leasee</b> Pacifico Power 30900 Rancho Viejo Road, Suite 230 San Juan Capistrano, California 92675</p>	<p><b>Sheet Title</b> American Land Title Association and National Society of Professional Surveyors A.L.T.A. / N.S.P.S. Land Title Survey</p>	<p><b>Consultant</b> Compass Consulting Incorporated 14743 Stinson Drive Grass Valley, California 95949 Phone: (530) 210-6398 Phone: (530) 519-3382</p>
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<p>Title Company  <b>First American Title Insurance Co.</b>          550 Mamoroneck Avenue, Suite 401          Harrison, New York 10528</p>	<p>Owner  <b>County Sanitation District 20          Los Angeles County</b>          39300 30th Street E.          Palmdale, California 93550</p>	<p>Lessee  <b>Pacifico Power</b>          30900 Rancho Viejo Road, Suite 230          San Juan Capistrano, California 92675</p>	<p>Sheet Title          American Land Title Association          and          National Society of Professional Surveyors          A.L.T.A. / N.S.P.S. Land Title Survey</p>	<p>Consultant  <b>Compass Consulting Incorporated</b>          14743 Stinson Drive Grass Valley, California 95949          Phone: (530) 210-6398 Phone: (530) 519-3382</p>
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**Exhibit 3**  
**Amended and Restated Energy Services 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.** District shall purchase from Service Provider, and Service Provider shall sell to District, all of the electric energy generated by, and the energy storage associated with the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively, the “**Term**”). Electric energy generated by the System will be delivered to District at the Delivery Point, as identified on **Exhibit 2**, and shall be delivered at Alternating Current (“AC”). District shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Service Provider to District at the Delivery Point. District may purchase electric energy for the Facility from other sources if the District’s electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated or stored 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. There will be no charge to District for any test energy generated by the System.
3. **Term and Termination.**
  - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” will be the date specified in a written notice from Service Provider to District, in which notice Service Provider confirms that the System is mechanically complete and capable of providing electric energy to the Delivery Point, and any approval or authorization (or, if applicable, interconnection agreement) from the entity authorized and required under applicable law to provide electric distribution service to District at the Facility specified in Item 6 in **Exhibit 2** (the “**Utility**”) has been obtained. Upon District’s request, Service Provider will give District copies of certificates of completion or similar documentation from Service Provider’s contractor and the approval or authorization (or, if applicable, interconnection agreement) from the Utility.
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, the Parties may, by mutual written agreement, 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, an “**Additional Term**”). The Additional Term shall begin immediately upon the conclusion of the Initial Term on the same terms and conditions as set forth in this Agreement.
4. **Billing and Payment.**
  - a. **Monthly Charges.** District shall pay Service Provider monthly for any services provided by the BESS portion of the System the electric energy generated by the Solar System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The monthly payment for the Contract Price 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. District shall also pay Service Provider, at the Contract Price rate, for the energy that the System was capable of generating and would have provided but for any alteration of the Facility as contemplated by **Section 8(d)**, any Scheduled Outage as contemplated by **Section 8(e)** or other acts or omissions of District that prevent the generation or delivery of energy as contemplated by this Agreement and that are not permitted to be taken by District under this Agreement.
  - b. **Monthly Invoices.** Service Provider shall invoice District monthly, either manually or electronically, at District’s indication. For the first month after the Commercial Operation Date or after the commencement of the sale of test energy, whichever comes first, Service Provider shall bill at the end of that calendar month, irrespective of the number of days after the Commercial Operation Date. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, and if any of the events contemplated in **Sections 8(d)** or **8(e)** occurred, the reasonably estimated amount (on the basis of the methodology described in **Sections 8(d)** or **8(e)**, as applicable) of electric energy that the System was capable of generating and would have provided as contemplated in **Section 4(a)** above, (ii) the rates applicable to, and charges incurred by, District under this Agreement, (iii) after the Commercial Operation Date, information with respect to demand reduction and number of charge cycles of the BESS, (iv) information with respect to the performance of the System with respect to the Performance Guaranties and (v) the total amount due from District. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five-dollar (\$25) handling charge will be added to each invoice.

- c. **Taxes.** District is responsible for: (i) payment of, or reimbursement of Service Provider for all taxes, if any, assessed on the generation, sale, and delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system. Any income taxes or similar taxes imposed on Service Provider's revenues due to the sale of energy or capacity under this Agreement shall be Service Provider's responsibility. Service Provider shall be solely responsible for all real property taxes, if any, with respect to the Leased Premises to the extent such real property taxes are assessed as a result of Service Provider's leasehold interest in the Leased Premises, use or occupancy of the Leased Premises, or the System, as well as any and all taxes for the System.
- 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 (but not to exceed the maximum rate permitted by law).
- e. **No Set-Offs.** Any and all payments hereunder shall be made without set-off, withholding or deductions of any kind.

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

Except as set forth in Section 11 of **Exhibit 1**, District is the owner of all Environmental Attributes and Environmental Incentives. Service Provider is entitled to the benefit of all Tax Credits, and District's purchase of electricity under this Agreement does not include the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Service Provider. Each Party shall reasonably cooperate (but shall not be required to incur any out-of-pocket costs or expenses) with the other Party in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits to which such Party is entitled under this Agreement, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits.

**"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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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, Tax Credits or net metering credits provided by the Utility. District and Service Provider 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 national, state or local government (whether domestic or foreign), 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 any arbitrator 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 or capacity from the System.

## 6. **Conditions to Obligations.**

- a. **Conditions to Service Provider's Obligations.** Service Provider's obligations under this Agreement as detailed in Section 7 below are conditioned on the completion of the following conditions to Service Provider's reasonable satisfaction on or before the Condition Satisfaction Date, as identified on **Exhibit 1**:
  - i. Completion of a physical inspection of the Facility and the Leased Premises including, if applicable, geotechnical work and real estate due diligence to confirm the suitability of the Facility and the Leased Premises for the System;

- ii. Approval of the System design by District;
- iii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Service Provider's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Service Provider and any contractor or subcontractor to install the System. "**Financing Parties**" means person or persons providing construction or permanent financing to Service Provider in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Service Provider has transferred the ownership interest in the System, subject to a leaseback of the System from such person;
- iv. Confirmation that Service Provider will obtain all applicable Environmental Incentives and Tax Credits;
- v. Receipt of all necessary zoning, land use, California Environmental Quality Act approvals, conditional use permits and building permits;
- vi. Execution of all necessary agreements by District with the Utility for interconnection of the System to the Facility's electrical system and/or the Utility's electric distribution system; and
- vii. Prior to Service Provider commencing construction and installation of the System, Service Provider shall have received (A) proof of insurance for all insurance required to be maintained by District under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Leased Premises or the Facility, as applicable, that such person will recognize Service Provider's rights under this Agreement for as long as Service Provider is not in default hereunder; (C) a signed original copy of the Lease Agreement, and (D) a signed and notarized original copy of the memorandum of the Lease Agreement.
- viii. No material changes to the assumptions set forth in Section 8 of **Exhibit 1** have occurred except for any adjustments to the Contract Price due to the occurrence of any added interconnection costs.

- b. **Conditions to District's Obligations.** District's obligations under Section 4(a) are conditioned on the occurrence of the Commercial Operation Date. In addition, District's obligations under this Agreement as detailed in Section 8 below are conditioned on the completion of the following conditions to the District's reasonable satisfaction on or before the Condition Satisfaction Date:
  - i. District shall have received (A) proof of insurance for all insurance required to be maintained by Service Provider under this Agreement, and (B) a signed original copy of the Lease Agreement, and (C) a signed original copy of the Interconnection Agreement entered into between the Utility and District.
  - ii. The County of Los Angeles shall have approved the Site Plan Review application permitting construction, operation, and maintenance of the System, and the District's Board of Directors shall have approved the CEQA documents for construction, operation, and maintenance of the System.
- c. **Failure of Conditions.** If any of the conditions listed in Section 6(a) or 6(b) above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then either Party may terminate this Agreement upon ten (10) days written notice to the other Party provided that such notice is delivered within twenty (20) days of the discovery of the failure of the applicable condition. Any termination of this Agreement contemplated by this Section 6(c) shall be without liability for costs or damages or triggering a default under this Agreement, except only for the Development Payment to be paid by District to Service Provider.

## 7. **Service Provider's Rights and Obligations.**

- a. **Permits and Approvals.** Service Provider, with District's reasonable cooperation (at no cost or liability to District), shall use commercially reasonable efforts to obtain, at its sole cost and expense:
  - i. any zoning, land use and building permits required to construct, install and operate the System; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility's electrical system and/or the Utility's electric distribution system.

District shall cooperate (at no cost or liability to District) with Service Provider in obtaining such agreements, permits and approvals. District shall be responsible to obtain all approvals or exemptions as required by CEQA and to obtain County of

Los Angeles approval for the Site Plan Review application. Service Provider shall use commercially reasonable efforts to obtain all other permits and approvals within two hundred seventy (270) days after full execution of this Agreement.

- b. **Interconnection Agreement Terms and Conditions.** Service Provider acknowledges and agrees to comply with the terms, conditions, provisions and requirements of the Southern California Edison Generating Facility Interconnection Agreement for the Facility (the “**Interconnection Agreement**”). Specifically, and without limiting the foregoing, Service Provider will comply with the requirements of Southern California Edison Rules 2 and 21 and the requirements of the California Public Utilities Code. Service Provider agrees to keep all records and produce all data promptly when and as requested and required by Southern California Edison Company, with copies to the District. Service Provider shall reimburse the District for the entirety of the interconnection fee paid by the District to Southern California Edison pursuant to the Interconnection Agreement (the “**Interconnection Payment**”) upon the later of (i) commencement of construction of the System, or (ii) within ten (10) days after written request from the District.
- c. **System Design Approval.** Service Provider shall provide District with a copy of the System design and any other equipment or infrastructure that Service Provider intends to install in the Leased Premises, all for written approval by the District prior to commencement of construction. The Parties shall cooperate with one another in good faith regarding the System design and respond to one another as soon as reasonably practicable with respect to any requests to review any System design documentation.
- d. **Standard System Repair and Maintenance.** Service Provider shall construct and install the System as approved by the District. During the Term, Service Provider will operate and perform all routine and emergency repairs to, and maintenance of, the System in order to keep the System in good working order and producing electric energy and capacity in accordance with manufacturers’ specifications at its sole cost and expense. Service Provider shall provide District with reasonable written notice prior to accessing the Facility to make standard repairs. Service Provider shall ensure that its maintenance and repairs to the System and entry therein do not adversely impact District’s business (including, without limitation, its hours and operations). Notwithstanding anything to the contrary in this Agreement, District shall have no duty whatsoever to inspect or monitor the System or any aspect thereof.
- e. **[Intentionally Omitted].**
- f. **Breakdown Notice.** Service Provider shall notify District in writing within twenty-four (24) hours following Service Provider’s discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy and capacity from the System. District and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. District shall notify Service Provider immediately upon the discovery of an emergency condition affecting the System. Notwithstanding the above, the District is under no obligation to inspect the System at any time.
- g. **Suspension.** Notwithstanding anything to the contrary herein, Service Provider shall be entitled to suspend delivery of electricity from the System to the Delivery Point without penalty for the purpose of routine maintenance and repair of the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Service Provider shall use commercially reasonable efforts to minimize any interruption in service to the District, and that Service Provider shall not be entitled to payment for any energy that it does not deliver to District.
- h. **Security.** Service Provider shall be responsible for using commercially reasonable efforts to maintain the physical security of the System against known risks and risks that should have been known by Service Provider. Service Provider will not conduct activities on, in or about the Leased Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility.
- i. **Data Line.** Service Provider shall provide a high-speed internet data line, the cost of which is included in the Contract Price.
- j. **Use of Contractors and Subcontractors.** Service Provider 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 any work in accordance with applicable industry standards and meet the requirements of this Agreement, including Exhibit 8. Notwithstanding the foregoing, Service Provider shall continue to be responsible for all actions and work of such contractors and subcontractors, including, without limitation, quality of the work performed by its contractors and subcontractors.
- k. **No Warranty.** OTHER THAN THE WARRANTIES AND GUARANTEES SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES OR REMEDIES, 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 THAT APPLY TO SERVICE PROVIDER'S OBLIGATIONS UNDER THIS AGREEMENT. The foregoing sentence is not intended to disclaim any obligations of Service Provider set forth in this Agreement or the Lease Agreement.

## 8. District's Rights and Obligations.

- a. **Lease to Area; Facility Access Rights.** The Parties agree to negotiate in good faith to enter into a Lease Agreement for the Leased Premises. The Service Provider acknowledges that the Lease Agreement is subject to review and approval by the District's Board of Directors and the process of drafting, negotiating, and obtaining Board of Directors approval may take 4-6 months after approval of this Agreement. No construction work may take place on the Leased Premises until the Lease Agreement has been approved by the District's Board of Directors. During the period between approval of this Agreement and approval of the Lease Agreement, the District agrees to grant the Service Provider temporary permit(s) to enter upon the Leased Premises to perform investigations needed in furtherance of this project, such as to conduct surveys and geotechnical borings. Service Provider may, at its sole cost and expense, record a memorandum of the Lease Agreement (in form and content acceptable to the District), which memorandum Service Provider may prepare consistent with the terms and conditions of the Lease Agreement in the appropriate land registry or recorder's office. Service Provider shall remove the System upon the expiration of the Term in accordance with the terms and conditions of the Lease Agreement. In addition, District and Service Provider shall execute a termination of the Lease Agreement, in recordable form, which shall be duly recorded upon the earlier of (i) the complete removal of the System in accordance with the terms of this Agreement following expiration or termination hereof, (ii) District's purchase of the System pursuant to the Purchase Option, or (iii) upon mutual agreement of the Parties. Service Provider shall not unreasonably interfere with the operation of District's business conducted in the Facility. In the event of that a Payment Default or Default Event has occurred under this Agreement on the part of Service Provider, the District shall have the right, at its sole option, to deem Service Provider, as tenant, in breach (without any right of cure) under the Lease Agreement.
- b. **OSHA Compliance.** Both Parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** District will ensure that the Facility remains interconnected to the Utility grid. District is fully responsible for the maintenance and repair of the Facility's electrical system from the Facility to the Delivery Point. District shall properly maintain in full working order all of District's electric supply or generation equipment that District has custody and control over while utilizing the System. District shall promptly notify Service Provider of any matters of which it becomes aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to materially and adversely affect the System; provided, however, the foregoing shall not be construed to impose upon the District any obligation to inspect or review any aspect of the System.
- d. **No Alteration of System.** District shall not make any alterations or repairs to the System which could materially and adversely affect the operation and maintenance of the System without Service Provider's prior written consent. If District wishes to make such alterations or repairs, District shall give prior written notice to Service Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Service Provider the opportunity to advise District in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, District shall be responsible for all damage to the System caused by District or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of District's alterations and repairs, shall be done by Service Provider or its contractors at District's cost. In addition, District shall pay Service Provider an amount equal to the sum of (i) payments that District would have made to Service Provider hereunder for electric energy and capacity that would have been produced by the System during such disconnection or removal; (ii) revenues that Service Provider would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy and capacity that would have been produced during such disconnection or removal; and (iii) [Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy and capacity that would have been produced by the System during such disconnection or removal. All of District's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** District shall be permitted to be off-line for a total of forty-eight (48) hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours District shall not be obligated to accept or pay for electricity from the System, provided that District must notify Service Provider in writing at least 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 forty-eight (48) hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Service Provider shall reasonably estimate the amount of electricity that would have been produced by the System during such Scheduled Outages or unscheduled outages. District shall pay Service Provider an amount equal to the sum of (i) payments that District would have made to Service Provider hereunder for electric energy and capacity that would have been produced by the System during such Scheduled Outage and/or unscheduled outage; (ii) revenues that Service Provider would have received with respect to the



System under any rebate program and any other assistance program with respect to electric energy or capacity that would have been produced during such Scheduled Outage and/or unscheduled outage; and (iii) Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy or capacity that would have been produced by the System during such Scheduled Outage and/or unscheduled outage.

- f. **Liens.** District shall not directly or indirectly cause, create, incur, assume or allow to exist 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. District shall immediately notify Service Provider 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 Service Provider, and shall indemnify Service Provider 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 18.a), Service Provider may grant a lien on the System and may assign, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party. Notwithstanding the foregoing, Service Provider shall have the right to file a UCC-1 Financing Statement with respect to the System or any part thereof, but such lien shall not be recorded against the fee interest of District in the Leased Premises.
- g. **Security.** District shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility against known risks and risks that should have been known by District. Service Provider shall be responsible for using commercially reasonable efforts to maintain the physical security of the System against known risks and risks that should have been known by Service Provider. District will not conduct activities on, in or about the Leased Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Service Provider will not conduct activities on, in or about the Leased Premises or the System that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility.
- h. **Insolation.** District understands that unobstructed access to sunlight ("**Insolation**") is essential to Service Provider's performance of its obligations and a material term of this Agreement. District shall use best efforts to not cause and, where possible, shall not permit any interference with the System's Insolation. The Parties agree that reducing Insolation would irreparably injure Service Provider, that such injury may not be adequately compensated by an award of money damages, and that Service Provider is entitled to seek specific enforcement of this Section 7.k(h) against District.
- i. **Breakdown Notice.** District shall notify Service Provider within seventy-two (72) hours following the discovery by it 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. District shall notify Service Provider immediately upon (i) an interruption in the supply of electrical energy or capacity attributes from the System; or (ii) the discovery of an emergency condition respecting the System. District and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Notwithstanding the above, the District is under no obligation to inspect the System at any time.

## 9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Service Provider's obligations hereunder and which has a material adverse effect on the cost to Service Provider of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Service Provider of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by District from Service Provider of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Service Provider shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination. Upon termination of this Agreement, each Party shall remain responsible to the other Party for any Default Event occurring prior to such termination.

## 10. Cessation of Operations at Facility.

If District ceases to conduct business operations at the Facility or otherwise vacates the Facility prior to the expiration of the Term, this Agreement shall terminate. The termination shall be treated as a Default Event of District, and the applicable provisions of Section 12(b) shall apply.

## 11. Measurement.

Service Provider shall install one or more meter(s), as Service Provider deems appropriate, at or immediately before the Delivery Point to measure the output of the System. District shall have the right to have a check meter on District's side of the Delivery Point. Service Provider shall ensure that each meter meets the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Service Provider shall test each meter periodically in accordance with generally accepted standards in the industry and shall immediately adjust each meter in the event of a variance of more than one (1%) percent.

## 12. 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 a “**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) business days following receipt of written notice from the other Party (the “**Non-Defaulting Party**”) of such failure to pay (“**Payment Default**”);
- ii. Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written 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) 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 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 its guarantor (if any), 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;
- v. Material interference by Service Provider with the operations of District at the Facility; or
- vi. Service Provider fails to execute and maintain all necessary interconnection agreements with a Utility.

### 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 (which includes, if Service Provider is the Non-Defaulting Party disconnecting the System). Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon fifteen (15) days prior written notice to the Defaulting Party following the Payment Default.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon fifteen (15) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Upon the occurrence of a Payment Default or Default Event by Service Provider under this Agreement, District shall have all rights and remedies under this Agreement, the Lease Agreement, at law and equity.
- iii. Damages Upon Termination by Default. Except as set forth in Section 12(b)(iv), 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 liquidated damages to the Non-Defaulting Party which have been calculated by the Parties as follows (“**Liquidated Damages Amount**”):

- A. District. In the event of a termination by Service Provider for a Default Event by District prior to the commencement of construction of the System, District shall be solely responsible for the Development Payment provided that such payment has not already been paid by the District to Service Provider. In the event of a termination by Service Provider for a Default Event by District from and after the commencement of construction of the System but prior to the Commercial Operation Date, District shall pay damages to Service Provider for its actual costs and expenses (which shall be validated by reasonable documentation) incurred to construct the System plus 15% markup of such costs and expenses. If Service Provider terminates this Agreement for a Default Event by District that occurs on or after the Commercial Operation Date, the Liquidated Damages Amount payable to Service Provider shall be equal to the applicable amount set forth in the Termination Payment schedule set forth as Item 9 of Exhibit 1. The Parties agree that actual damages to Service Provider in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by District would be difficult to ascertain, and the applicable Liquidated Damages Amount is a reasonable approximation of the damages suffered by Service Provider as a result of early termination of this Agreement. The Liquidated Damages Amount shall not be less than zero.
- B. Service Provider. If District terminates this Agreement for a Default Event by Service Provider that occurs (I) from and after the commencement of construction of the System and prior to the Commercial Operation Date, the Liquidated Damages Amount payable to District shall be equal to the sum of (X) \$427,192, and (Y) the amount of the Interconnection Payment (provided that such payment has not already been paid by Service Provider to the District); or (II) on or after the Commercial Operation Date, the Liquidated Damages Amount payable to District shall be equal to the sum of (X), the applicable amount set forth in the Termination Payment schedule set forth as Item 10 of Exhibit 1, and (Y), the amount of the Interconnection Payment (provided that such payment has not already been paid by Service Provider to the District). The Parties agree that actual damages to District in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Service Provider would be difficult to ascertain, and the applicable Liquidated Damages Amount is a reasonable approximation of the damages suffered by District as a result of early termination of this Agreement. The Liquidated Damages Amount shall not be less than zero.
- C. Exclusions from Liquidated Damages. The foregoing liquidated damages provisions shall not constitute a limit on, or waiver of, the Non-Defaulting Party's right to recover reasonable attorneys' fees and out-of-pocket costs under this Agreement to enforce the collection of the Liquidated Damages Amount or the Non-Defaulting Party's rights of indemnification under this Agreement.
- iv. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b) (or a termination occurs pursuant to Section 14(a)), then following such termination, Service Provider shall, at the sole cost and expense of the Defaulting Party and at the request of District, remove the equipment (including Electrical Appurtenances, mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

### 13. Representations and Warranties.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following:
- 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 a 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. Neither the execution and delivery of this Agreement by such Party nor the performance by such Party 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 such Party is a party or by which such Party is bound.

iii. 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 this Agreement, and such Party is in compliance with all laws that relate to this Agreement in all material respects.

**b. District's Representations and Warranties.** District represents and warrants to Service Provider the following:

- i. Lease. District has the full right, power and authority to grant the rights contained in the Lease Agreement. Such grant does not violate any law, ordinance, rule or other governmental restriction applicable to District or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which District is bound or that affects the Facility.
- ii. Accuracy of Information. All information provided by District to Service Provider, as it pertains to the Facility's physical configuration, District's planned use of the Facility, and District's estimated electricity requirements, is accurate in all material respects to the best of District's knowledge at the time the information was provided.
- iii. District Status. District is not a public electric utility or a public electric utility holding company and is not subject to regulation as a public electric utility or a public electric utility holding company.
- iv. Leased Premises. The District owns the Leased Premises in fee.

**c. Service Provider's Representations and Warranties.** Service Provider represents, warrants, and covenants to District as of the date of this Agreement and throughout the term of this Agreement as follows:

- i. Service Provider shall obtain industry standard manufacturers' warranties with respect to the System prior to the Commercial Operation Date that commence on the Commercial Operation Date;
- ii. To the best of Service Provider's knowledge after due inquiry and investigation, the Delivery Point contains sufficient capacity to accommodate the System;
- iii. There is no material adverse change that affects the creditworthiness of Service Provider or its subcontractors to perform Service Provider's obligations under this Agreement; and
- iv. Service Provider has the knowledge and experience to perform its obligations under this Agreement in a commercially reasonable manner.

In addition to the foregoing, Service Provider warrants and represents to the District that upon commencement of construction of the System, Service Provider has received adequate assurance from its financiers that required funding arrangements have been established.

**14. System and Facility Damage and Insurance.**

**a. System and Facility Damage.**

- i. Service Provider's Obligations. If the **System** is damaged or destroyed other than by District's negligence or willful misconduct, Service Provider shall, within ninety (90) days after such damage or destruction, inform the District in writing whether it shall repair and restore the System to its pre-existing condition or terminate this Agreement and pay the Termination Payment set forth in Section 12(b)(iii)(B). In the event that Service Provider fails to inform the District of its election within such 90-day period, Service Provider will be deemed to have elected to terminate this Agreement and shall pay the Termination Payment as provided above. Notwithstanding the foregoing, District acknowledges that if the System constitutes collateral for the benefit of the Financing Parties, such Financing Parties or an agent or trustee on their behalf will be the loss payees in respect of property or casualty insurance for the System and will have the right to apply the proceeds of such insurance in accordance with the financing arrangements to which they are a party.
- ii. District's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Service Provider's negligence or willful misconduct, such that the operation of the System and/or District's ability to accept the electric energy produced by the System are materially impaired or prevented (as determined by the District), District shall either (A) promptly restore the Facility to permit continued operation of the System, in which case the Term shall be extended for the period that the Facility is unable to receive electric energy from the System or (B) pay the Termination Payment described in Section 12(b)(iii)(A) and thereupon terminate this Agreement.

- b. **Insurance Coverage.** At all times during the Term, Service Provider shall maintain the following insurance:
- i. **Service Provider's Insurance.** Service Provider shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate, (C) employer's liability insurance with coverage of at least one million dollars (\$1,000,000) per accident/disease, (D) automobile insurance with coverage of one million dollars (\$1,000,000) per occurrence, and (E) workers' compensation insurance as required by law. Service Provider shall add District (Nos. 2 and 20) as an additional insured to all aforementioned policies. The aforementioned insurance policies shall contain a waiver of subrogation for the benefit of the District barring Service Provider or any of its officers, employees or agents, or its carriers from bringing an action in subrogation against the District relating to any of the aforementioned insurance policies, including workers' compensation insurance.

**Standard Endorsement Language.** "County Sanitation Districts Nos. 2 and 20 of Los Angeles County, the public entities, Authorities, and Sanitation Districts for which County Sanitation District Nos. 2 and 20 of Los Angeles County is the appointed administrative agent, and their respective elected officials, officers, employees, boards of directors, agents, and volunteers as additional insured by endorsement."

- 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 to 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.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

## 15. **Ownership; Purchase Option**

- a. **Ownership of System.** The Parties acknowledge that District will at all times be the legal and beneficial owner of the Environmental Attributes, but that the System is and shall remain personal property of Service Provider. Each of the Service Provider and District agree that the Service Provider (or the designated assignee of Service Provider permitted under Section 18) 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 and otherwise for purposes of state and federal law. Service Provider shall file a UCC-1 Financing Statement and renew prior to such expiration dates at Service Provider's cost and expense. District covenants that it will use commercially reasonable efforts to inform all parties having an interest in or a mortgage, pledge, lien, charge, security interest, or encumbrance of any nature on the Facility or the Leased Premises 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 the Leased Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Leased Premises, District shall provide a disclaimer or release from such lienholder. If District is the fee owner of the Leased Premises, District consents to the filing of a disclaimer of the System as a fixture of the Leased Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If District is not the fee owner, District will obtain such consent from such owner. Upon request, District agrees to deliver to Service Provider a subordination and non-disturbance agreement in a form reasonably acceptable to Service Provider from the owner of the Facility (if the Facility is leased by District), any mortgagee with a lien on the Leased Premises, and other persons or entities holding a similar interest in the Leased Premises. To the extent that District does not own the Leased Premises or Facility, District shall provide to Service Provider immediate written notice of receipt of notice of eviction from the Leased Premises or Facility or termination of District's lease of the Leased Premises and/or Facility.
- b. **Purchase Option.** At the end of each of the Contract Years set forth in Item 12 of Exhibit 1, so long as District is not in default under this Agreement, District may purchase the System from Service Provider on any such date for a purchase price equal to the greater of the fixed price set forth as the "Purchase Option Price" of Item 12 of Exhibit 1 or the Fair Market Value (as defined below) of the System. District must provide a notification to Service Provider of its intent to purchase at least ninety (90) days prior to the end of the applicable Contract Year, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year. Service Provider shall transfer good, marketable title to the System to District upon Service Provider's receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied,

concerning the System, “as is, where is, with all faults”; provided that Service Provider shall assign to District any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, District will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Service Provider shall have no further liabilities or obligations hereunder. The Parties shall act in good faith to extend or shorten these time requirements to efficiently and reasonably complete the purchase.

- c. **Determination of Fair Market Value.** “Fair Market Value” means, in Service Provider’s reasonable determination, the greater of: (i) 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, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of five percent (5%)) of all associated future income streams expected to be received by Service Provider arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, and Tax Credits and factoring in future costs and expenses associated with the System avoided. Service Provider shall give written notice to District of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If District reasonably objects to Service Provider’s determination of Fair Market Value within thirty (30) days after Service Provider has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic and storage industries 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.

## **16. Indemnification and Limitations of Liability.**

- a. **Indemnity from Service Provider.** To the fullest extent permitted by law, Service Provider agrees to indemnify, release, defend, and hold harmless the District, all other County Sanitation Districts of Los Angeles County, and their respective directors, employees, representatives, and agents (the “**District’s Indemnified Parties**”) from and against any third-party loss, claim, liability, cost, expense, including attorney’s fees (collectively, the “**Liabilities**”) for any third-party injury or damage to person or property, or of any kind or nature, occurring in, on, or about the Leased Premises, arising for any reason which relate to: (i) the obligations of Service Provider under this Agreement; (ii) the acts or omissions of Service Provider or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Financing Parties, or others acting on Service Provider’s behalf or under Service Provider’s authority or control; (iii) any aspect of the System, or (iv) the occupancy and/or use of the Leased Premises (including but not limited to any improvements or personal property located therein) by Service Provider, or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Financing Parties, or others acting on Service Provider’s behalf or under Service Provider’s authority or control. The Service Provider’s obligations in this Section 16(a), however, shall not extend to any Liabilities that are proximately caused by the fraud, gross negligence or willful misconduct of District.
- b. **Indemnity from District.** To the fullest extent permitted by law, District agrees to indemnify, release, defend, and hold harmless Service Provider, its employees, agents, and representatives (the “**Service Provider’s Indemnified Parties**”) from and against any Liabilities for any third-party injury or damage to person or property, or of any kind or nature, occurring in, on, or about the Leased Premises, arising for any reason which relate to: (i) the obligations of the District under this Agreement; or (ii) the acts or omissions of District. The District’s obligations in this Section 16(b), however, shall not extend to any Liabilities that are proximately caused by the fraud, gross negligence or willful misconduct of Service Provider.
- c. **Notice and Participation in Third Party Claims.** The Party entitled to indemnification as set forth above (the “**Indemnified Party**”) shall give the other Party (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 16(c) 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 16(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party. The indemnities set forth in this Section 16 shall survive the expiration or termination of this Agreement.

d. **Environmental Indemnification.** Service Provider shall indemnify, defend and hold harmless all of District's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Leased Premises or the Facility of any Hazardous Substance (as defined in Section 16(d)(i)) to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. District shall indemnify, defend and hold harmless all of Service Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, or below the Leased Premises of any Hazardous Substances that were deposited, spilled, or caused by the District. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Leased Premises or the Leased Premises generally or any deposit, spill or release of any Hazardous Substance. Service Provider shall not use Hazardous Substances in the Facility or in, on, around, or under the Leased Premises.

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 any laws 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.

e. **Limitations on Liability.**

i. **No Consequential Damages.** 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. This section does not apply, however, to any Termination Payment or any other damages the calculation of which is specifically provided for in this Agreement, including any liquidated damages specified in Exhibit 5 or Exhibit 6, or a Party's fraud, gross negligence or willful misconduct. In addition, the Parties agree that (i) in the event that Service Provider is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by District, such recaptured amount shall be deemed to be direct and not indirect or consequential damages.

17. **Force Majeure.**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence 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; epidemics and pandemics; quarantines; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; 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; provided, 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 oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the 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. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. 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 District's ability to make payment.

d. If a Force Majeure event continues for a period of twelve (12) consecutive months and prevents a material part of the performance by a Party hereunder, either Party shall have the right to terminate this Agreement and the provisions of Section 14(a) shall apply to such termination.

## 18. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, in the event of a sale by District of the Leased Premises, District shall have the right to assign this Agreement and the Lease Agreement concurrently to the purchaser of the Leased Premises; provided further, however, Service Provider may, without the prior written consent of District (but with written notice no less than thirty (30) days prior to the occurrence of an assignment described in this proviso), (i) assign, pledge or otherwise assign its interests in this Agreement and the System as collateral to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Service Provider, (iii) assign this Agreement and the System to any entity through which Service Provider is obtaining financing or capital for the System or (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of the System (provided that Service Provider shall be released from liability hereunder (but not for any liability that accrued prior to any assignment) as a result of any of the foregoing permitted assignments only upon assumption of Service Provider's obligations hereunder by the assignee (in form and content acceptable to the District) and only if the assignee shall have credit which is equal to or better than the credit of Service Provider as of the Effective Date (all as reasonably determined by the District). In the event of any such assignment, the Service Provider shall be released from all its liabilities and other obligations under this Agreement except for liabilities and obligations that accrued prior to such assignment. However, any assignment of Service Provider's rights and/or obligations under this Agreement shall not result in any change to District's rights and obligations under this Agreement, any material change in the terms of this Agreement or any material reduction in the obligations of Service Provider hereunder. District's consent to any other assignment shall not be unreasonably withheld if District has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement (all as reasonably determined by the District). This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Service Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. In connection with an assignment pursuant to Section 18(a)(i)-(iv), District agrees to execute a consent or estoppel in form and substance reasonably acceptable to such Financing Parties and to District which may include extensions to the cure periods (not to exceed 30 days) in the case of a Default Event of Service Provider. Service Provider shall immediately provide to the District a true and correct copy of any notice of default or breach received by Service Provider from any Financing Party.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long-term financing or other credit support provided to Service Provider or its affiliates by Financing Parties, that such Financing Parties may require that Service Provider 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**"). Promptly upon District's request, Service Provider shall cause such Successor Provider shall execute and deliver an agreement to perform Service Provider's obligations under this Agreement in form and content acceptable to the District. District agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement and there is no material reduction in the obligations hereunder owed to District by Service Provider or such Successor Provider.

## 19. Confidentiality and Publicity.

- a. **Confidentiality.** If either Party provides any information, including, but not limited to, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of District's or Service Provider's business ("**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, business 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. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 19(a), except as set forth in Section 19(b). 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 19(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 19(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 19(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, District is subject to the provisions of the California Public Records Act, Government Code section 6250, et seq. (“PRA”). In the event that District is compelled, by deposition, interrogatory, subpoena, request under the PRA, civil investigative demand, or other governmental or regulatory requirement, to disclose information that Service Provider considers to be Confidential Information, District shall furnish Service Provider with prompt written notice as described and subject to the provisions below, provided that District may only furnish Confidential Information directly related to this Agreement. Nothing in this Agreement shall be construed to prevent the receiving Party from making any disclosure of any Confidential Information (i) if required to do so by any applicable law or regulation; (ii) that becomes publicly available other than through the receiving Party; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. In the event the receiving Party becomes legally compelled to disclose Confidential Information disclosed to it by the disclosing Party, the receiving Party will promptly, but in any event within three (3) business days of becoming aware of such compulsion, notify the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions of this Section 19(b), the receiving Party shall furnish only that portion of the Confidential Information which the receiving Party is advised by legal counsel is legally required and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The disclosing Party shall pay for all attorney's fees, legal costs, or sanctions awarded to the third party and shall hold the receiving Party, its directors, officers, and agents harmless from the same.

20. **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.

## 21. **Miscellaneous Provisions**

- a. **Choice of Law**. The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees**. In the event a dispute arises between the Parties related to this Agreement, the following process shall be followed: (a) Each Party will designate a senior executive (“**Designated Representative**”) to represent it in connection with any dispute that may arise between the Parties. The designations shall be noticed as described in Section 21(c). Subsequent changes in a Party's Designated Representative shall be in writing and communicated in the same manner. (b) The Designated Representatives will meet with their attorneys within thirty (30) calendar days after written request by any Party to any other Party to resolve the dispute. (c) If the Designated Representatives are unable to resolve the dispute within thirty (30) calendar days following their first meeting, the Parties may take any action they may deem necessary to protect their interests, subject to applicable provisions of California law, including Section 9204 of the Public Contract Code, and construed in accordance with the laws of the State of California. The venue for any action relating to this Agreement will be the Superior Court of Los Angeles County. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs. Neither Party shall be liable to the other for any special, exemplary, consequential, or punitive damages, except for a Party's fraud, gross negligence or willful misconduct.
- c. **Notices**. All notices under this Agreement shall be in writing and shall be by personal delivery, 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 Section or such other address as either Party may specify in writing from time to time. Each Party shall deem a document emailed or electronically sent in PDF form to it as an original document.

If to District:

Los Angeles County Sanitation Districts  
Attn: William Chen, Energy Recovery Section  
1955 Workman Mill Road  
Whittier, CA 90601  
Phone: (562) 908-4288, ext. 2431  
Email: wchen@lacsds.org

If to Service Provider:

Pacifico Power Palmdale 01 LLC  
Attn: Kevin Pratt  
30900 Rancho Viejo Road Ste 230  
San Juan Capistrano, CA 92675  
Phone: (949) 481-8200  
Email: kevinp@pacificopower.com

For all billing related requests, please contact Service Provider at: Chanvibol Sok, vibols@pacificopower.com, (949) 795-8383

- 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 7(k) (No Warranty), Section 14(b) (Insurance Coverage), Section 16 (Indemnification and Limits of Liability), Section 19 (Confidentiality and Publicity), Section 21(a) (Choice of Law), Section 21(b) (Arbitration and Attorneys' Fees), Section 21(c) (Notices), Section 21(h) (Comparative Negligence), Section 21(i) (Non-Dedication of Facilities), Section 21(k) (Service Contract), Section 21(l) (No Partnership), Section 21(m) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 21(o) (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 or reasonably requested by the other Party which are not inconsistent with 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. **Delegation of Authority.** The District delegates to its Chief Engineer and General Manager, or his or her designee, the authority to take any and all actions on behalf of the District, including, without limitation, all easements, consents, approvals, amendments and authorizations that, in his or her judgment, serve to carry out the purposes of this Agreement.
- g. **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; 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 District or Service Provider 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.
- h. **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.
- i. **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 Service Provider 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 Service Provider does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Service Provider shall have the right to terminate this Agreement without further liability, and Service Provider shall remove the System in accordance with Section 8(a) of this Agreement.

- j. Estoppel.** Either Party hereto, without charge, at any time and from time to time (but no more than once per calendar year), within ten (10) 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.
- k. 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. District 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.
- l. 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.
- m. Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any 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, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts (including by electronic format) 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.
- n. Forward Contract.** 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.
- o. No Third-Party Beneficiaries.** Except for the District’s Indemnified Parties, Service Provider’s Indemnified Parties, permitted assignees and Financing Parties permitted under Section 18, 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.
- p. Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- q. Warranty of Authority.** Each individual signing this Agreement warrants and represents that he or she has the full authority to execute this Agreement on behalf of the Party on whose behalf he or she so signs, that he or she is acting within the scope of such authority, and that this Agreement shall be binding upon and enforceable against the Party on whose behalf he or she so signs by virtue of such signature.

- r. **Order of Precedence**. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:
- i. Amendments, addenda or other modifications to this Agreement duly executed by the Parties after the Effective Date, with those of a later date having precedence over those of an earlier date;
  - ii. **Exhibit 1** to this Agreement;
  - iii. this **Exhibit 3** to this Agreement; and
  - iv. the other Exhibits to this Agreement.

Notwithstanding the foregoing provisions of this Section 21(r), if a conflict exists within a part of this Agreement as listed in a lettered subclause above, or between or among this Agreement, applicable laws, and the Lease Agreement, such conflict shall be reasonably reconciled with this Agreement as a whole.

**End of Exhibit 3**

**Exhibit 4**  
**INTENTIONALLY OMITTED.**

**Exhibit 5**  
**Solar Performance Guaranty**

This performance guaranty with respect to the solar portion of the System (this “**Guaranty**”) sets forth the terms and conditions of a guaranty provided by Service Provider in conjunction with the Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in the Agreement. The term of this Guaranty will be concurrent with the Term of the Agreement. All references to the “System” in this **Exhibit 5** shall mean only the solar energy generation portion of the System.

1. **Guaranty.** Service Provider guarantees that during the Term of the Agreement the System will generate not less than ninety percent (90%) of the projected generation of the System as set forth in **Table 1.A** below (such adjusted figure, the “**Guaranteed kWh**”).

A. **Table 1.A** sets forth the projected production values for the System:

Contract Year	Annual kWh
Year 1	9,872,141
Year 2	9,822,780
Year 3	9,773,666
Year 4	9,724,798
Year 5	9,676,174
Year 6	9,627,793
Year 7	9,579,654
Year 8	9,531,756
Year 9	9,484,097
Year 10	9,436,677
Year 11	9,389,493
Year 12	9,342,546
Year 13	9,295,833
Year 14	9,249,354
Year 15	9,203,107
Year 16	9,157,092
Year 17	9,111,306
Year 18	9,065,750
Year 19	9,020,421
Year 20	8,975,319
Year 21	8,930,442
Year 22	8,885,790
Year 23	8,841,361
Year 24	8,797,154
Year 25	8,753,168

B. If at the end of each successive Contract Year, the AC electricity produced by the System as measured and recorded by Service Provider (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year (the “**Shortfall Amount**”), then Service Provider shall pay District an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment

Rate (as defined in Section 1(D) below), in each case with respect to the affected Contract Year. The Parties agree, in good faith, to modify the Guaranteed kWh for each Contract Year on a Weather-Adjusted Basis so that the compensation payable for any Contract Year reflects better or worse irradiance than was set forth in meteorological projections in the weather file for that Contract Year.

For the purposes of this Exhibit 5, “Weather-Adjusted Basis” means the process of normalizing the projected generation of the System as set forth in **Table 1.A** above and the Guaranteed kWh by reconciling such estimates with actual onsite historical weather data obtained from the System weather station or a nearby weather station for the period of System generation under review and adjusting generation estimates to reflect the impact from weather deviation from original modeled assumptions. Normalization of the System production estimates with actual onsite historical weather data will be calculated by multiplying the projected generation of the System as set forth in **Table 1.A** above and the Guaranteed kWh by the following ratio: *SEMMY/PG*, where:

“**SEMMY**” or Simulated Energy in a Measured Meteorological Year, means, with respect to any Contract Year, the projected generation of the System simulated by HelioScope using actual measured average hourly irradiance, wind speed, and air temperature as recorded by the data acquisition system, holding all other inputs equal to those used in calculating the PG; and

“**PG**” means the projected generation of the System as set forth in **Table 1.A** above for such Contract Year.

- C. (i) Service Provider will deliver a statement to District detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.
- D. “**Performance Guarantee Payment Rate**” means the dollar value per kWh set forth in **Table 1.D** below:

Contract Year	\$/kWh
Year 1	\$0.000
Year 2	\$0.012
Year 3	\$0.019
Year 4	\$0.025
Year 5	\$0.032
Year 6	\$0.040
Year 7	\$0.048
Year 8	\$0.056
Year 9	\$0.065
Year 10	\$0.074
Year 11	\$0.084
Year 12	\$0.095
Year 13	\$0.106
Year 14	\$0.117
Year 15	\$0.130
Year 16	\$0.143
Year 17	\$0.156
Year 18	\$0.171
Year 19	\$0.186

Year 20	\$0.202
Year 21	\$0.152
Year 22	\$0.166
Year 23	\$0.181
Year 24	\$0.197
Year 25	\$0.213

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):
- A. a Force Majeure event;
  - B. a Scheduled Outage;
  - C. long term reductions in Insolation levels below the levels used by Service Provider in establishing the Guaranty due to obstruction of Insolation at the Facility that commences after the Effective Date and is caused by structures or vegetation on property other than the Leased Premises, as confirmed by an independent engineer's report; and
  - D. any act or omissions, including any Default Event, of the District.

In addition, Service Provider shall not be responsible for a failure to achieve any Guaranteed kWh to the extent that (a) the sum of (i) the Actual kWh for the current Contract Year and all previous Actual kWh amounts for prior Contract Years plus (ii) the Shortfall Amount for which Service Provider has paid compensation under this Exhibit 5 is greater than (b) the sum of the Guaranteed kWh for the current Contract Year and all previous Guaranteed kWh amounts for prior Contract Years.

3. **Compensation.** The Parties agree that the payment described in Section 1(B) is reasonable compensation for the damages suffered by District as a result of underperformance of the System, and such payment shall not limit, affect, or waive any rights and remedies of the District under the Agreement, at law or equity due to an independent breach, Payment Default or Default Event of Service Provider under the Agreement.

**End of Exhibit 5**



**Exhibit 6**  
**Battery Performance Guaranty**

This performance guaranty with respect to the energy storage portion of the System (this “**Guaranty**”) sets forth the terms and conditions of a guaranty provided by Service Provider in conjunction with the Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in the Agreement. The term of this Guaranty will be concurrent with the Term of the Agreement. All references to the “System” in this **Exhibit 6** shall mean only the energy storage portion of the System.

**Definitions**

Capacity – Shall mean the usable BESS capacity available for discharging from the BESS measured in kilowatt hours (“kwh”).

Power Output – Shall mean the maximum instantaneous power output of the BESS measured in kilowatts.

Available – Means the BESS is online and capable of charging and or discharging.

Availability – The total hours the system is available in a given year divided by the total hours in the same year.

Guaranteed Availability – 95%

**Capacity Guarantee.**

Service Provider guarantees that the battery Capacity will be no less than the values indicated in the table below except in the case where the BESS has exceeded limitations and exclusion listed in the following section. Capacity shall be measured through the energy management system. The BESS shall be allowed to full charge to a 100% state of charge and then discharged to the minimum allowable state of charge. The discharged energy during this cycle shall be measured as the Capacity. The District may request a capacity test each year if the operational data cannot adequately demonstrate the full storage capacity of the battery. Should Capacity be less than the values indicated below, District will be compensated per the compensation rate set forth below:

	Guaranteed Capacity	Compensation rate
Contract Year	kWh	\$/kwh/year
Year 1	1,829	\$20
Year 2	1,760	\$22
Year 3	1,721	\$23
Year 4	1,682	\$25
Year 5	1,653	\$27
Year 6	1,614	\$30
Year 7	1,575	\$32
Year 8	1,545	\$35
Year 9	1,516	\$38
Year 10	1,487	\$41
Year 11	1,457	\$44
Year 12	1,428	\$48
Year 13	1,408	\$51

Year 14	1,389	\$55
Year 15	1,369	\$59
Year 16	1,345	\$64
Year 17	1,320	\$69
Year 18	1,297	\$74
Year 19	1,273	\$80
Year 20	1,250	\$87
Year 21	1,228	\$94
Year 22	1,206	\$101
Year 23	1,184	\$109
Year 24	1,163	\$118
Year 25	1,142	\$127

**Availability Guarantee**

The BESS will be available to charge and discharge greater than the Guaranteed Availability. If the BESS Availability is less than this rate, District will be compensated for each percent below the Guaranteed Availability according to the schedule below:

	Compensation rate
Contract Year	\$/%/year
Year 1	\$358
Year 2	\$380
Year 3	\$403
Year 4	\$427
Year 5	\$453
Year 6	\$480
Year 7	\$509
Year 8	\$539
Year 9	\$571
Year 10	\$606
Year 11	\$642
Year 12	\$681
Year 13	\$721
Year 14	\$765
Year 15	\$811
Year 16	\$859
Year 17	\$911
Year 18	\$965
Year 19	\$1,023
Year 20	\$1,085

Year 21	\$1,150
Year 22	\$1,219
Year 23	\$1,292
Year 24	\$1,369
Year 25	\$1,452

**End of Exhibit 6**

**Exhibit 7**  
**Technical Specifications**

**Scope of Solar and Battery Installation**

Service Provider will provide the following in respect to Service Provider-owned photovoltaic and battery system (“System”) tied to District’s facility to offset electrical consumption and provide economic benefits as provided in the Amended and Restated Energy Services Agreement (ESA).

Construction of the system on the District’s property includes:

1. Service Provider will obtain, maintain and pay for all required licensing to work in state and jurisdiction.
2. Project Management
  - 2.1. Provide and manage General Conditions and General Requirements for the construction of the System.
  - 2.2. Provide and service all construction facilities as it relates to the System.
  - 2.3. Provide and service all construction equipment as it relates to the System.
  - 2.4. Provide and manage temporary utilities as needed during construction of the System.
  - 2.5. Provide tools and expendables for the building of the System.
  - 2.6. Provide travel and travel expenses as needed to staff the building and construction of the System.
  - 2.7. Onsite management on construction process for defined scope.
    - 2.7.1. Minimum requirements
      - 2.7.1.1. Onsite Superintendent during the duration of onsite construction of the System.
        - 2.7.1.1.1. Craft management of the construction labor.
        - 2.7.1.1.2. Administers a site-specific safety plan focused on zero injuries.
        - 2.7.1.1.3. Manages and implements quality control and quality assurance programs.
        - 2.7.1.1.4. Safety and Quality inspections by qualified individuals.
      - 2.7.2. Project Manager assigned for duration of project.
        - 2.7.2.1. Oversees scope.
        - 2.7.2.2. Maintains and updates project schedule in MS Project.
          - 2.7.2.2.1. Provides baseline schedule.
          - 2.7.2.2.2. Provides 3 week look ahead at each weekly meeting.
        - 2.7.2.3. Oversees communication to District on project progress.

2.7.2.4. Holds and records weekly update meetings.

2.7.3. Provide project management services as related to the construction of the System.

2.8. Project Management reporting on Build by Autodesk.

2.9. Provide and manage quality control testing and surveying as determined by Service Provider.

3. Provide mobilization and site prep for construction of the System.

4. Design and Engineering

4.1. Apply for, pay for, and coordinate all utility requirements as it relates to interconnection of the System.

4.2. All design work to meet the following codes and standards.

	NATIONAL ELECTRICAL SAFETY CODE (ANSI-C2)
	NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)
	ELECTRICAL SAFETY ORDERS (CAL-OSHA)
	NATIONAL ELECTRICAL CODE (NFPA 70)
	ELECTRICAL CODE OF COUNTY OF LOS ANGELES
	AMERICAN NATIONAL STANDARD INSTITUTE (ANSI)
	INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)
	NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION (NEMA)
	ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA (IES)
	UNDERWRITERS LABORATORIES (UL)
	INSULATED CABLE ENGINEERS ASSOCIATION (ICEA)

4.3. Develop Engineered drawings phased at 50%, 90%, and 100%. Provide for Districts reviews between phases up to 100%.

4.4. Design specifications at the array within the Exclusive Use Area to be NEC compliant and meet industry standards.

4.5. Design specifications from array fence to Point of Common Coupling (POCC) within the Non-Exclusive Use Area to meet the specifications described in section 11 below.

4.6. Civil

4.6.1. Service Provider to create topographical drawings.

4.6.2. Service Provider to perform geotechnical testing and provide geotechnical report to supplement foundation designs.

4.6.3. Service Provider to perform clearing and grubbing of array area.

4.6.4. Service Provider to design access roads within the array satisfactory to fire department requirements.

4.6.5. Service Provider to design permanent roads and array access.

4.6.6. Service Provider to provide Storm Water Pollution Prevention Plan (SWPPP) or DCPD as applicable. Service Provider will comply with water discharge requirements.

4.6.7. Service Provider to provide trenching and boring plans.

4.7. Structural

4.7.1. Service Provider to create tracker foundation design.

4.7.2. Service Provider to provide racking design.

4.7.3. Service Provider to provide equipment pad designs.

4.7.4. Calculations

4.7.5. Fence Design

4.8. Electrical – all design to meet NEC requirements.

4.8.1. Service Provider to provide grounding details for racking and equipment.

4.8.2. Service Provider to design AC electrical collection system.

4.8.3. Service Provider to provide switchgear design.

4.8.4. Control system design integrating Tesla Site Controller with emergency generators.

4.8.5. Service Provider to provide transformer design.

4.8.6. Service Provider to provide metering points and strategy as part of design.

4.8.6.1. Service Provider to design for monitoring and low voltage communications.

4.8.6.2. Service Provider to design POCC or interconnection design.

4.8.6.3. All electrical equipment must be listed and bear the label of UL or a nationally recognized electrical testing laboratory listed by OSHA.

4.9. Confirm baseline of coordination for integration

4.10. Service Provider will perform an electrical coordination study and arc flash hazard analysis for new solar PV and equipment as designed by Hawkins Design Group. Coordination Study scope of work to include existing 800A breaker in SWBRD 1 (CB-1) and existing 800A breaker in SWBRD 2 (CB-11), 400A breaker in SWBRD 2 (CB-5) for new solar interconnection, and all breaker in new megapacks and AC combiner. All other loads and breakers within system are existing to remain untouched and are assumed to be coordinated under previous designs. Client to provide all pertinent information, to include wire size, final wire length, wire type, breaker type. Arc Flash Hazard Analysis to include labeling for all new devices only.

5. Procurement

5.1. All equipment shall be new and any damaged material shall be repaired or replaced prior to installation at no additional cost to the District.

5.2. All outdoor equipment enclosures shall have a minimum NEMA rating of Type 3R.

5.3. Service Provider is responsible for proper procurement of all materials.

- 5.4. Service Provider shall identify any long lead items.
- 5.5. Service Provider is responsible for and maintains coordination of material deliveries.
- 5.6. Service Provider receives, offloads, and stores all jobsite materials.
- 5.7. Service Provider coordinates compatibility between all materials.

5.8. Equipment

5.8.1. Solar panels.

5.8.1.1. Shall be from a tier one Service Provider.

5.8.1.2. CEC listed.

5.8.1.3. 25-year warranty.

5.8.1.4. Anti reflective coating.

5.8.1.5. Flash testing must be certified and validated by a third party.

5.8.2. Inverters

5.8.2.1. Suitable for grid interconnection and be in compliance with all utility interconnection requirements.

5.8.2.2. Must comply with UL 1741 and IEEE 1547.

5.8.2.3. CEC listed and approved in the interconnection agreement.

5.8.3. Tracker

5.8.3.1. Shall be from an established single axis tracker design with more than 100 mw of installed product.

5.8.3.2. Designed to survive outdoor conditions at project location for a minimum of 20 years.

6. Submittals

- 6.1. District shall have up to fifteen (15) working days to review submittals and five (5) working days for resubmittals. Service Provider shall submit on equipment and materials and the following:
- 6.2. Site specific Health and Safety Plan
- 6.3. Storm Water Pollution Prevention Plan. For the avoidance of doubt: the Service Provider has not budgeted any extra ordinary measures to comply with existing stormwater discharge plan. If such measures are discovered to be required to be in compliant with SWRCB the increase in scope will need to be addressed by Change Order.
- 6.4. Dust Control Plan
- 6.5. Construction Quality Assurance and Quality Control Plan
- 6.6. Site utilization plan including

- 6.6.1. Stored materials
- 6.6.2. Fueling
- 6.7. Emergency Response Plan
- 6.8. Hazardous Materials Plan
- 6.9. Concrete mix designs
  - 6.9.1. Concrete reinforcement
  - 6.9.2. Technical qualifications for medium voltage work including cable terminations.
- 6.10. Equipment
  - 6.10.1. Modifications to existing medium voltage switchgear.
  - 6.10.2. Low voltage switchgear and switchboards
  - 6.10.3. Inverters
  - 6.10.4. DC disconnect switches
  - 6.10.5. Medium and low voltage cabling
  - 6.10.6. Controls
  - 6.10.7. Monitoring and Metering Systems
  - 6.10.8. Array Tracker
  - 6.10.9. Modules
- 6.11. Start-up Testing Plan
  - 6.11.1. The Contractor shall submit for the District's acceptance a detailed Test and Startup Plan. No testing or startup activities shall be performed until the plan is accepted by the District. As a minimum, the plan shall include the following:
    - 6.11.1.1. Qualifications of the test and startup personnel.
    - 6.11.1.2. Listing of test equipment to be used.
    - 6.11.1.3. Listing of visual and mechanical inspections to be performed.
    - 6.11.1.4. Listing of electrical tests to be performed.
    - 6.11.1.5. A test procedure for each test to be performed.
    - 6.11.1.6. Step-by-step sequential procedure for the commissioning of the proposed switchgear and associated feeder circuits
- 6.12. Construction Schedule



- 6.12.1. Construction schedule shall be a CPM schedule.
- 6.12.2. Schedule shall be developed and updated using Oracle Primavera P6 or Microsoft Project scheduling software.
- 6.12.3. Schedule shall be updated each month or as directed by the LACSD Engineer
- 6.12.4. CPM schedule shall identify work within District's property.

6.13. As-built drawings

7. Construction

- 7.1. Construction is budgeted for regular time working hours not outside of Monday through Friday from 7:00 am to 5:00 pm. A request for modifications to hours may be made to District in special conditions such as disturbing work, adverse weather, or deliveries.
- 7.2. Service Provider performs underground hazard and utility services.
- 7.3. Service Provider performs survey as related to system location, orientation, and pathway to POCC.
- 7.4. Service Provider responsible for mobilization and site organization.
- 7.5. Service Provider designates on-site work areas, storage, and facilities.
- 7.6. Service Provider performs the installation of civil work according to plans.
- 7.7. Provides grubbing, tree, and organic material removal.
- 7.8. Provides and performs rough and final grading.
- 7.9. Provides and performs all imports or exports.
- 7.10. Provides and performs all water management features per design.
- 7.11. Provides and installs all erosion control measures including DCPMP best practices.
- 7.12. Creates, maintains, and records DCPMP inspections for Service Providers, DCPMP best practices and construction area.
- 7.13. Provides and installs foundation preparations including predrill.
- 7.14. Provides and installs roads and access routing.
- 7.15. Service Provider completes mechanical structure.
- 7.16. Provides and installs foundations per plans and specifications.
- 7.17. Provides and installs racking, hardware, and module support structure.
- 7.18. Provides and installs equipment mounting structure.
- 7.19. Provides and installs equipment pads.
- 7.20. Provides and installs 8 ft fence around array.

7.21. Service Provider installs complete electrical system.

7.21.1. Provide and install DC wiring management, raceway, fuses, breakers, conductors, and grounding system.

7.21.2. Provide and install AC wiring management, raceway, fuses, breakers, conductors, panel boards, switch gear and disconnects.

7.21.3. Provide underground trenching, conduit, and conductors. Conduit in trenching after array must comply with counties re-enforced concrete encasement or be 20' below grade using boring.

7.21.4. Backfill compaction and patchback in like material (concrete, asphalt)

7.21.5. Provide and install switchgear, panelboards, and transformers.

7.21.6. Provide and install metering systems including CT's and PT's.

7.21.7. Provide and install monitoring systems.

7.21.8. Provide and install control system including full integration into existing backup system.

7.21.9. Provide engineering and materials for interconnection including breaker if needed.

7.21.10. Service Provider to schedule and perform shutdown for interconnection if needed.

7.21.11. Provide and install all electrical and equipment pads.

7.21.12. Provide and install protection bollards as needed.

7.21.13. Provided and install battery storage system.

7.21.14. Provide and Install PV/Battery switchgear and disconnects.

7.21.15. Provide and install modules and connections.

7.21.16. Final connection to POCC is to be using District-approved copper conductors.

7.21.17. Service Provider to retain independent special inspector where special inspections are required.

7.21.18. Service Provider performs complete commissioning of System.

7.22. Facilitate verification and capacity tests.

7.23. Provide close out documentation including commissioning reports.

7.24. Provide As-Built drawings.

8. Service Provider to include performance and payment bonds.

9. Service Providers work includes prevailing wage.

10. Excluded:

10.1. Irrigation

10.2. Facility upgrades

10.3. Hard dig (including predrill requirements, rock removal, chipping or hammering, or caliche)

## 11. District specifications and application

11.1. The District's specifications as described here will be applied to all work from array fence line to POCC, specifically the Electrical Appurtenances installed within the Non-exclusive Use Area. It shall include:

**11.2. Before any shutdown, partial shutdown, removal or interference, the Contractor shall submit a written request for the shutdown. The request shall include a detailed description of the work to be completed, a detailed plan for the execution of the work, a list of the materials required to complete the work and a list of personnel or subcontractors that will be performing the work. The Contractor shall not be allowed to start work until the District has accepted the request. The request will be used by the District to ensure that the Contractor is ready for the shutdown, and that he can complete the work in the allotted time. In all cases, the District's Operation Staff will shut down the equipment, take it offline, and turn the equipment over to the Contractor. At the completion of the work, the District's Operation Staff will return the equipment to service. Energizing and de-energizing of all electric equipment shall be performed ONLY by the Districts personnel.**

11.3. General

11.3.1. Any pavement, curb and gutter and other infrastructure that is disturbed for conduit and duct bank installation must be restored to original condition.

11.3.2. Underground conduit to be minimum of schedule 40 PVC. Conduit at depths less than twenty (20) feet shall be installed in steel reinforced concrete duct bank per district standard detail 16J-27.

11.3.3. Concrete encasement for duct banks shall be 2000 psi compressive strength at 28 days.

11.3.4. Concrete encasement for duct banks shall be colored with 3 pounds of iron oxide per sack of cement.

11.3.5. Concrete encasement shall be a minimum of 3 inches on outside of conduit or duct bank at top and sides.

11.3.6. Ductbank encasement shall be reinforced.

11.3.7. Directional boring is acceptable at 20' depth without concrete encasement. Conduits inside directional boring areas shall be minimum Schedule 80 PVC.

11.3.8. Above ground or exposed conduit shall be rigid aluminum conduit (RAC), or PVC lined and coated rigid galvanized steel conduit (RGC).

11.3.9. Conduit shall be plumb and level in its routing.

11.3.10. Conduit spacing for different power levels shall be installed with proper spacing to avoid electromagnetic interference.

11.3.11. Installation of conductors

11.3.11.1. Splicing of conductors is not allowed.

11.3.11.2. Installation of all conductors shall be done according to the conductor manufacturer's recommendations. Only suitable conductor pulling equipment with smooth variable-speed control shall be used for installation of conductors in conduit. For Medium voltage AC cables

and fiber optic lines a dynamometer installed at the pulling end of the conductor installation shall be used for indication of actual tension on the conductors. Manufacturer-recommended maximum tension and sidewall pressure shall not be exceeded at any time.

- 11.3.11.3. For 4-inch raceway conduits only, before pulling conductors in each 4-inch raceway conduit, a solid mandrel, a wire brush mandrel, and a swab, properly sized for the conduit, shall be pulled through the conduit to ensure that the conduit is clear of any object that may damage the conductors.
- 11.3.11.4. UL-listed conductor-pulling compounds, compatible with the conductor insulation and coverings, shall be used.
- 11.3.11.5. Conductors shall not come in contact with earth or concrete during installation. In order to install conductors without a splice, they shall be laid out on canvas or plastic spread on the ground for protection from contact with earth or concrete.
- 11.3.11.6. Conductors shall be pulled into place on the cable trays using tools specifically designed for the purpose. Sufficient number of rollers, sheaves and guides shall be used to limit tension in the conductors as recommended by the manufacturer.
- 11.3.11.7. All conductors shall be installed in a workmanlike manner. The conductors shall be neatly formed in all junction boxes, pull boxes, terminal boxes and control panels.
- 11.3.11.8. Ends of medium-voltage conductors shall be kept sealed until terminated. After pulling, all end seals shall be inspected and resealed, if necessary. Before terminating, cut off the ends of conductors subjected to pulling grips.
- 11.3.11.9. The Contractor shall submit complete data on the proposed conductors, with the conductor manufacturer's recommendations for testing, for acceptance by the District.
- 11.3.11.10. Bending radii of the conductors shall not be less than those required by NEC and conductor manufacturer.
- 11.3.11.11. Insulation resistance tests and measurements shall be performed on all wiring. If any modifications are done to conductors after resistance testing, the test shall be performed again. Insulation testing will not be performed on wiring between modules and combiner boxes.
- 11.3.12. Traffic-rated pull boxes to be used at transitions and at extended runs or turns.
- 11.3.13. PVC terminations in underground pull boxes shall be with bell ends that are grout sealed at penetration.
- 11.3.14. Openings provided for conduit passage through any electrical enclosure or through the wall, floor or ceiling of any building shall be sealed with a two-component, non-sag, polyurethane-based elastomeric sealant. The sealant shall be Sikaflex-2c NS as manufactured by Sika Corporation or equal.
- 11.3.15. Conduit
  - 11.3.15.1. All above ground conduit shall be rigid aluminum conduit (RAC) or PVC lined and coated rigid galvanized steel conduit (RGC) with threaded connections.
  - 11.3.15.2. All conduits penetrating concrete pavement or slabs shall be PVC lined and coated rigid galvanized steel conduit (RGC).

11.3.15.3. All underground conduits shall be schedule 40 PVC installed in reinforced concrete duct bank at a minimum of 2' below grade or Directional boring at 20' depth using schedule 80 PVC, and/or PVC lined and coated rigid galvanized steel conduit (RGC)

**End of Exhibit 7**

**Exhibit 8**  
**Prevailing Wage**

**1. Prevailing Wage, Rates, Travel, and Subsistence.**

- a. Wage Rates.** Pursuant to the provisions of Article 2 Chapter 1, Part 7, Division 2, of the Labor Code (§ 1770 et seq.), Pacifico shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification, or type of worker needed to provide the work contemplated under this Agreement from the Director of the DIR. Pacifico shall submit a copy of the general rate of per diem wages for each craft, classification, or type of work that Pacifico intends to use to execute the work to District for review. A copy of these rates are listed in Attachment 1 of this Agreement, on file with the District, and copies will be made available to any interested party on request. Pacifico shall also post a copy of such wage rates at Site and Plant ("Facilities").

For any worker employed to perform work, where such work is not covered by any classification listed in the published general prevailing wage rates determinations or per diem wages determined by the DIR, said worker shall be paid not less than the minimum rate of wages specified in the classification which most nearly corresponds to the employment of such person in such classification.

- b. Holiday and Overtime Pay.** Holiday and overtime work, when permitted by law, shall be paid for at a rate set forth in the prevailing wage determinations issued by the DIR or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in this Agreement, or authorized by law for all work performed.
- c. Wage Rates Not Affected By Other Contracts.** Pacifico shall pay and shall cause to be paid to each employee to whom prevailing wage rates apply not less than the general prevailing rate of per diem wages determined by the DIR, regardless of any contractual relationship which may be alleged to exist between Pacifico and employee.
- d. Travel and Subsistence.** Pacifico shall pay and shall cause to be paid to each employee performing work travel and subsistence payments, as such travel and subsistence payments are defined by the DIR and in accordance with Labor Code § 1773 *et seq.*, including but not limited to Labor Code § 1773.1.
- e. Change in Prevailing Wage.** Pacifico shall comply with the prevailing wage determinations in effect as of the Effective Date of this Agreement and shall comply with any predetermined increases required under the determinations.
- f. Minimum Wage Rates.** Any worker employed to perform work, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the DIR, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work to be performed by them.
- g. Per Diem Wages.** Pacifico shall pay and shall cause to be paid to each employee performing work per diem wages including, but not limited to, employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.1.
- h. Posting of Wage Rates.** Pacifico shall post the required notice/poster required under the California Code of Regulations and Labor Code § 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Facilities. The required notice/poster is available on the Labor Commissioner's website.
- i. Forfeiture and Payments.** Pursuant to Labor Code § 1775, Pacifico shall forfeit to District not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the DIR, for such craft or classification in which such worker is employed for any work performed. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of Engineer's mistake, inadvertence, or neglect in failing

to pay the correct prevailing rate of per diem wage, the previous record of Pacifico in meeting his or her prevailing rate of per diem wage obligations, or Engineer's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if Pacifico had knowledge of it or the obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by Engineer.

- j. Monitoring and Enforcement by Labor Commissioner.** Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). Pacifico shall be required to furnish, at least once every thirty days while work is being performed on the Project, certified payroll records directly to the Labor Commissioner in accordance with Labor Code § 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. Pacifico must sign up for, and utilize, the Labor Commissioner's electronic Certified Payroll Records (CPR) submission system. District will have direct and immediate access to all CPRs for work performed under this Agreement that are submitted through the Labor Commissioner's system. District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner and DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code § 226, and conducting random in-person inspections of the Facilities ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Facilities, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have, subject to Federal, State, Local and Company safety protocols, access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

Any lawful activities conducted, or any lawful requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against District by Engineer. Pacifico and all employees shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

### **1.1 Records of Wages Paid: Certified Payroll Submissions and Inspection.**

#### **a. Payroll Records.**

- i. Pursuant to § 1776 of the Labor Code, Pacifico shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.
- ii. All payroll records as specified in Labor Code § 1776 of Pacifico shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code § 1771.4(a)(3) on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code § 1776 shall be certified and submitted to the District in hard copy (not electronic) with each application for payment or invoice. All payroll records shall be available for inspection at all reasonable hours at the principal office of Pacifico on the following basis:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- b. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the District, the DLSE or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the DLSE. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by Engineer, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Engineer.
- iii. The certified payroll records shall be on forms provided by the DLSE or shall contain the same information as the forms provided by the DLSE.
- iv. Pacifico shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- v. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the DLSE shall be marked or redacted to prevent disclosure of an individual's name, address and social security number. The name and address of Pacifico awarded the work shall not be marked or redacted. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or redacted only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- vi. Pacifico shall inform the District of the location of all payroll records, including the street address, city and county, and shall provide notice of a change of location and address within ten (10) days of same.
- vii. Pacifico shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that Pacifico fails to comply within the 10-day period, Pacifico shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the DLSE, these penalties shall be withheld from payments then due to Engineer.
- viii. Responsibility for compliance with this Article shall rest upon Engineer.

**b. Withholding of Contract Payments & Penalties.**

District may withhold or delay contract payments to Pacifico if:

- i. The required prevailing rate of per diem wages determined by the DIR is not paid to all employees performing work;
- ii. Pacifico fails to submit all required certified payroll records with each application for payment or invoice, but not less than once per month;



- iii. Pacifico submits incomplete or inadequate payroll records;
- iv. Pacifico fails to comply with the Labor Code requirements concerning apprentices; or
- v. Pacifico fails to comply with any applicable state laws governing workers on public works projects.

## 1.2 Apprentices.

- a. **Apprentice Wages and Definitions.** All apprentices employed by Pacifico to perform work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, as determined by the DIR, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with section 3070) of Division 3, are eligible to be employed under this Agreement. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California apprenticeship Council.
- b. **Apprentice Labor Pool.** When Pacifico employs workers in any apprenticeable craft or trade, Pacifico shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the work, for a certificate approving Pacifico under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving Engineer, shall arrange for the dispatch of apprentices to Pacifico in order to comply with this section. Pacifico shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Facility of the work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Pacifico shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade at the Facility, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.
- c. **Journeyman/Apprentice Ratio; Computation of Hours.** Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. Pacifico shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.
- d. **Journeyman/Apprentice Ratio.** Engineer, if covered by this section upon the issuance of the approval certificate, or if previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by

Pacifico that it employs apprentices in the craft or trade in the state on all of its contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting Pacifico from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts, when the contracts of general Engineers or those specialty Engineers involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

- e. **Apprenticeable Craft or Trade.** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting Pacifico from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:
  - i. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
  - iii. There is a showing that the apprenticeable craft or trade is replacing at least one- thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
  - iv. Assignment of an apprentice to any work performed under this Agreement would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- f. **Ratio Exemption.** When exemptions are granted to an organization which represents Engineers in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Engineers will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards. 12.3.7. Apprentice Fund. If Pacifico employs journeymen or apprentices in any apprenticeable craft or trade and is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Facility, to which fund or funds other Engineers in the area of the site of the Facility are contributing, Pacifico shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Facility in the same amount or upon the same basis and in the same manner as the other Engineers do, but if the trust fund administrators are unable to accept the funds, Pacifico shall pay a like amount to the California Apprenticeship Council. Pacifico may add the amount of the contributions in computing its bid for the contract. The DLSE is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.
- g. **Pacifico Compliance.** The responsibility of compliance with paragraph 12.3 and § 1777.5 of the Labor Code for all apprenticeable occupations is with Engineer.
- h. **Decisions of Joint Apprenticeship Committee.** All decisions of the joint apprenticeship committee under this paragraph 12.3 and Labor Code § 1111.5 are subject to Labor Code § 3081.
- i. **No Bias.** It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code § 3077.
- j. **Violations/Indemnity.** District reserves the right to withhold monthly payments if District is notified, or determines as a result of its own investigation, that Pacifico or subconsultants are in violation of any

requirements as set forth in Labor Code section 1720, et seq. at no penalty or cost to the District. Pacifico and subconsultants agree to indemnify, defend, save and hold harmless District and its agents, servants and employees, against any and all claims, costs, demands, causes of action, suits, losses, expense or other detriment or liability arising from or out of their failure to be properly registered with the DIR, to pay the proper prevailing wage rate to any employee working on a District project, or to otherwise fail to comply in all respects with California prevailing wage laws applicable to Districts projects.

- k. Violation of Labor Code.** Pursuant to Labor Code § 1777.7, in the event Pacifico willfully fails to comply with the provisions of this paragraph 11.3 and Labor Code § 1777.5:
- i. The DIR shall deny to Pacifico the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.
  - ii. If Pacifico violates §1777.5 it shall forfeit as a civil penalty the sum of two hundred dollars (\$200) for each calendar day of noncompliance. Notwithstanding § 1727, upon receipt of a determination that a civil penalty has been imposed, District shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.
  - iii. In lieu of the penalty provided for in subdivision (a) or (b), the DIR may for a first-time violation and with the concurrence of the joint apprenticeship committee, order Pacifico to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.
  - iv. Any funds withheld by District pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.
  - v. The interpretation and enforcement of § 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

### **1.3 DIR Registration.**

- a. Registration by Pacifico and All Sub Engineers of Any Tier.** Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of Pacifico under the Agreement. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the work by Engineer. The failure of Pacifico to be properly registered with DIR at all times during performance of the work is a material breach of the Agreement and subject to termination for cause. An affirmative and ongoing obligation of Pacifico under the Agreement is the verification that all sub Engineers of any tier are at all times during performance of the work in full and strict compliance with the DIR registration requirements. Pacifico shall not permit or allow any sub Engineer of any tier to perform any work without District's verification that all sub Engineers are in full and strict compliance with the DIR registration requirements. Any sub Engineers of any tier not properly registered with DIR shall be substituted in accordance with Labor Code § 1771.1.