

## **ENERGY SERVICES AGREEMENT**

### **Ellis Creek Floating Solar Facilities**

This Energy Services Agreement (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), between ELLIS CREEK SOLAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY (“Provider”), and CITY OF PETALUMA, a California municipal corporation and a charter city (“Purchaser”); and, together with Provider, each, a “party” and together, the “parties”).

### **RECITALS**

- A. Purchaser desires that Provider install and operate a solar photovoltaic system at the premises for the purpose of providing Energy Services, as these terms are defined in this Agreement, and Provider is willing to have the Installation Work, as defined in Exhibit C - General Terms and Conditions, performed by one or more qualified contractors holding the applicable licenses as required in the State of California for the performance of such work.
- B. Provider is in the business of designing, constructing, owning, financing, and operating solar photovoltaic systems for the purpose of selling power generated by the systems to Provider’s power purchasers.
- C. California Government Code sections 4217.10 *et seq.* authorizes a public entity to enter into energy service contracts, facility financing contracts, and related agreements to implement the State’s conservation and alternative energy supply source policy, subject to specified procedural requirements.
- D. Purchaser’s governing body has made the findings required by Government Code section 4217.12, that the anticipated cost to the Purchaser for Energy Services provided under this Agreement is expected to be less than the anticipated marginal cost to the Purchaser of electrical energy that Purchaser would have consumed in the absence of its purchase of the Energy Services under this Agreement.

In consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1. Corporate Diligence. As of the Effective Date, Provider has delivered to Purchaser and Purchaser has deemed the following documentation satisfactory indicia of Provider’s ability to perform the Energy Services: (i) operating agreement of Provider, (ii) certificate evidencing Provider’s ability to do business within the State of California, (iii) a good standing certificate from the State of Delaware, (iv) consolidated financials of White Pine Development, LLC, a Delaware limited liability company, and (v) a certificate of insurance evidencing that Provider has appropriate insurance coverage under this Agreement.
- 2. Incorporation of Exhibits, Integration and Precedence. The following exhibits to this Agreement are hereby incorporated herein as if set forth in their entirety and made a part of this Agreement by this reference.

- a. Exhibit A System Description and Preliminary Site Plan
- b. Exhibit B Insurance Requirements
- c. Exhibit C General Terms and Conditions
  - i. Attachment A – Site License
  - ii. Attachment B – Certain Agreements for the Benefit of Financing Parties
  - iii. Attachment C – Requirements Applicable to the Installation Work
  - iv. Attachment D – City of Petaluma Living Wage Ordinance Acknowledgement and Certification
- d. Exhibit D Technical Specifications
  - i. D.1 Scope of Work
  - ii. D.2 Supplementary Criteria
  - iii. D.3 Review Process, Submittals, Commissioning, and Closeout
- e. Exhibit E Site-Specific Requirements
- f. Exhibit F Performance Test
- g. Exhibit G Sample Invoice

This Agreement, together with the exhibits listed in this section constitute the entire understanding between Provider and Purchaser with respect to the subject matter of this Agreement and supersede in their entirety all prior agreements relating to the subject matter of this Agreement. The exhibits listed in this section are integral to and express parts of this Agreement.

In the event of a conflict between or among the provisions of this Agreement and the exhibits listed in this section, such conflicts shall be resolved by giving precedence as follows:

- i. This Agreement
  - ii. Exhibit E – Site Specific Requirements
  - iii. Exhibit C – General Terms and Conditions
  - iv. Exhibit D – Summary of Work and Technical Specifications
3. Definitions. In addition to other terms defined elsewhere in this Agreement, the following words and phrases shall have the following meanings:

- a. “Actual Monthly Production” means the amount of electricity produced by the System and recorded by Provider’s metering equipment during each calendar month of the Term.
- b. “Close of Construction Financing” means the time by which all of the following have occurred: i) the Provider has been granted building, electrical and any other permits necessary for the Project work to commence, ii) the Site License has been fully executed by the parties and recorded, iii) the Purchaser has provided a signed estoppel certificate indicating that this Agreement is still in full force and effect, iv) the local utility provider interconnection agreement has been signed by the Provider, v) applicable CEQA requirements have been satisfied for approval of the Project and the Provider legislative body has approved this Agreement as legally required, vi) and the Purchaser has provided to the Provider written Construction Notice to Proceed.
- c. “Construction Notice to Proceed” means authorization issued by the Purchaser which allows Provider to order the EPC Contractor to mobilize and start construction of the Project.
- d. “Daylight Hours” means the time period starting at sunrise, and measured in 60-minute increments thereafter until sunset.
- e. “Design Notice to Proceed” means authorization issued by the Purchaser to Provider allowing System design to commence.
- f. “Distribution Upgrades” means the distribution upgrades and customer-side switch gear modifications and upgrades required by the Local Electric Utility to connect the System to the Local Electric Utility distribution system in accordance with the System Impact Study prepared by the Local Electric Utility.
- g. “Energy Services” means all obligations of the Provider pursuant to this Agreement, including, without limitation, designing, obtaining permits for, financing, constructing and installing, operating, maintaining, and if required, dismantling the System, and supplying Purchaser with the electrical energy output from the System in accordance with the terms of this Agreement. Without limitation, the Energy Services also include the following:
  - i. Performing site due diligence sufficient to design, engineer, obtain permits for and construct the System.
  - ii. Designing, engineering and obtaining permits for the System, which consists of a solar photovoltaic (PV) floating array, including float system, racking, inverters, wiring and all balance of system (BOS) components, including spare conduits, all as described in the Technical Specifications, Exhibit D.
  - iii. Providing monitoring and metering capabilities, including a cloud-based monitoring platform, for the System.

- iv. Managing and completing the interconnect process with the Local Electric Utility and obtaining permission to operate (PTO) in accordance with the requirements of California Public Utility Commission Net Energy Metering program NEM2.
  - v. Ensuring the System is constructed in accordance with the plans, specifications, and permits for the System as approved by the Provider and the Purchaser.
  - vi. Commissioning the System and performing construction project close-out.
  - vii. Providing all incidentals required, such as permits, approvals, environmental compliance, freight, procurement, monitoring, inspection, billing, and incidentals as necessary to design, construct, and commission the System.
  - viii. Obtaining financing for design, construction, and operation of the System in accordance with this Agreement.
  - ix. Providing comprehensive operation, maintenance and management of the System for the entire term of this Agreement, including all necessary maintenance to maintain System performance and to satisfy all applicable performance guarantees in this Agreement.
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- h. “Energy Services Payments” means Purchaser’s monthly payments to Provider to purchase electricity produced by the System and for the performance of all of Provider’s Energy Services obligations pursuant to this Agreement, in accordance with Section 9.
  - i. “EPC Contract” means an engineering, procurement and construction contract between Provider and the EPC Contractor for the construction of the System. The EPC Contract is a subcontract of the Provider pursuant to this Agreement.
  - j. “EPC Contractor” means the party to the EPC Contract that is responsible for the engineering, procurement, design and construction of the System pursuant to the terms and conditions of the EPC Contract. The EPC Contractor is a subcontractor of the Provider pursuant to this Agreement.
  - k. “Final Completion” means that i) Substantial Completion has occurred, ii) the Project punch-list is completed, iii) Close of Construction Financing has occurred, and iv) Mechanical Completion has occurred.
  - l. “Guaranteed Commercial Operation Date” means the date specified in paragraph (b) of Section 7.
  - m. “Guaranteed Construction Start Date” means the date specified in paragraph (a) of Section 7.
  - n. “kWh Rate” means the rates specified in the table Section 9 that are applied to the electricity produced by the System and that are used for calculating the monthly Energy Service Payments due to Provider pursuant to this Agreement.

- o. “Mechanical Completion”: means the time by which i) the AHJ has provided final approval of the Project Building and Electrical Permits, and ii) Close of Construction Financing has occurred.
  - p. “Premises” means the land underlying the City of Petaluma Ellis Creek Water Recycling Facility located at 3890 Cypress Drive and 4400 Lakeville Highway, Petaluma, California, 94954, APNs 068-010-023, 068-010-024, 068-010-025, 068-010-033, and 068-010-034, as further described in Exhibit A to Attachment C.
  - q. “Project” means the work necessary for the Provider to design, obtain permits for, finance, construct and install the System.
  - r. “Project Development Costs” means costs that Purchaser has or will incur for the development of the Project. Project Development Costs include but are not limited to costs of consultants, staff time and other costs of developing the Project as defined by the Purchaser.
  - s. “Substantial Completion” means the time by which i) the System has commenced regular and daily operation, ii) all System commissioning is complete, iii) the only construction work outstanding is the Project punch-list, which has been mutually agreed to by the Provider and the Purchaser, iv) Close of Construction Financing has occurred, and v) Mechanical Completion has occurred.
  - t. “System” means the floating solar photovoltaic system the completion of which constitutes the completion of the Project and the operation and maintenance of which constitutes part of the Energy Services. The System is more particularly described in Exhibit A.
  - u. “System Impact Study” means the study completed by the Local Electric Utility that provides an estimate of the total cost required to interconnect the System to the electric grid of the Local Electric Utility.
  - v. “Term” means the Initial Term of this Agreement and subsequent Renewal Term(s), if any, which are referred to collectively as the “Term.” The Initial Term means the period of time specified in Section 4 of this Agreement, and Renewal Term(s) mean the optional extension periods described in Section 5 of this Agreement.
4. Initial Term. The initial term of this Agreement shall commence on the Effective Date specified above and shall continue for Twenty (20) years from the Commercial Operation Date (as defined in Section 1.9 of Exhibit C, General Terms and Conditions,), unless and until amended in accordance with Section 20 of this Agreement or this Agreement is terminated earlier in accordance with Section 2 of the General Terms and Conditions.
5. Renewal Term(s). After the Initial Term, this Agreement may be renewed for additional five (5) year Renewal Terms. At least one hundred and eighty (180) days, but no more

than three hundred and sixty-five (365) days, prior to the expiration of the Initial Term, Purchaser shall give written notice to Provider of the Purchaser's desire to extend the Initial Term by one or more Renewal Term. Unless the parties otherwise agree, the parties shall reach agreement on whether to amend this Agreement by adding a Renewal Term or Terms at least ninety (90) days before the expiration of the Term then in effect. Absent the parties' mutual agreement to amend this Agreement by adding a Renewal Term or terms in accordance with Section 20, this Agreement shall expire on the Expiration Date, as specified in Section 1.21 of Exhibit C, General Terms and Conditions. The parties may by mutual agreement agree to amend this Agreement by extending the Initial Term by up to three Renewal Terms at rates and according to terms to be negotiated by the parties.

6. Privacy. Purchaser acknowledges that the System may collect certain information about Purchaser's electricity usage and the System performance. Such information may be stored and processed in the United States or any other country in which Provider or its third-party service providers, or its or their respective affiliates, subsidiaries, or service providers, maintain facilities. Purchaser consents to any such transfer of information outside of Purchaser's country, subject to applicable laws regarding sharing of such information.
7. Project Milestone Dates.
  - a. The Guaranteed Construction Start Date is December 31, 2023, subject to extension as set forth in Section 5 of Exhibit C, General Terms and Conditions
  - b. The Guaranteed Commercial Operation Date is twelve (12) months from the Construction Start Date, subject to extension as set forth in Section 5 of Exhibit C, General Terms and Conditions.
8. Power Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the electricity generated by the System and made available by Provider to Purchaser at the delivery point during each month of the Term after the Commercial Operation Date, up to a maximum of one hundred and ten percent (110%) of Estimated Annual Production, as defined in Section 12. Purchaser's power purchase payments are calculated and billed on a per kilowatt-hour (kWh) basis as set forth in this section. Purchaser's power purchase payments, referred to as Energy Service Payments, shall constitute Purchaser's sole payment obligations pursuant to this Agreement. Purchaser's power purchase payments are consideration not only for the electricity Provider shall supply to Purchaser pursuant to this Agreement, but also for all other Energy Services Provider is obligated to perform pursuant to this Agreement.
9. Energy Services Payments. Purchaser shall pay Energy Services Payments to Provider monthly as the consideration for the electricity produced by the System and for Provider's performance of the Energy Services during each calendar month of the Term according to the following formula. The Energy Services Payments shall be equal to the product of (x) Actual Monthly Production of the System for the relevant month multiplied by (y) the (kWh) Rate. The kWh Rates that shall apply for each year of the Initial Term are as follows:

**PPA Rate Table**

<b>Term Year</b>	<b>kWh Rate (\$/kWh)</b>
1	0.0962
2	0.0980
3	0.0999
4	0.1018
5	0.1037
6	0.1057
7	0.1077
8	0.1097
9	0.1118
10	0.1140
11	0.1161
12	0.1183
13	0.1206
14	0.1229
15	0.1252
16	0.1276
17	0.1300
18	0.1325
19	0.1350
20	0.1376

10. Payment of Purchaser's Project Development Costs. Provider will finance Purchaser's Project Development Costs pursuant to this Agreement and reimburse Purchaser's Project Development Costs totaling three hundred thousand dollars (\$300,000) within thirty (30) days of receipt of an invoice from the Purchaser according to the following schedule:

\$75,000 (25% of total Project Development Costs) at Close of Construction Financing.

\$75,000 (25% of total Project Development Costs) at Mechanical Completion.

\$75,000 (25% of total Project Development Costs) at Substantial Completion.

\$75,000 (25% of total Project Development Costs) upon Final Completion.

11. Required Interconnection / Distribution Upgrades.

- a. Purchaser has received System Impact Study Results from the Local Electric Utility of Distribution Upgrades required by the Local Electric Utility for installation and operation of the System. Within 75 days of the Effective Date, Provider shall reimburse Purchaser for the costs incurred by Purchaser prior to the Effective Date related to the Distribution Upgrades required by the Local Electric Utility. Provider shall be responsible to pay any costs related to Distribution Upgrades following the Effective Date. The kWh Rates specified in the PPA Rate Table in Section 9 are inclusive of the cost of the Distribution Upgrades required by the Local Electric Utility and customer-side switchgear modifications and upgrades.

- b. Purchaser acknowledges and agrees that the interconnection scope of work set forth in Section 1.02(B)(9) of Exhibit D1 is acceptable and consistent with Purchaser's understanding of the scope of the customer-side interconnection design. Purchaser further acknowledges and agrees that the kWh Rates set forth in Section 9 are based upon the scope of such interconnection design.
12. **Estimated Annual Production.** The annual estimate of electricity generated by the System commencing with the Commercial Operation Date and for each year of the Initial Term is shown in the table below. The values set forth below are estimates (and not guarantees), of approximately how many kilowatt-hours (kWhs) are expected to be generated annually by the System assuming the System size indicated in Exhibit A and based on initial System designs. Provider shall deliver to Purchaser on or about the Commercial Operation Date an estimated annual production table adjusted as necessary to reflect the actual System size and design.

<b>Estimated Annual Production</b>	
<b>Term Year</b>	<b>Estimated Production (kWh)</b>
1	9,074,592
2	9,029,219
3	8,984,073
4	8,939,153
5	8,894,457
6	8,849,985
7	8,805,735
8	8,761,706
9	8,717,897
10	8,674,308
11	8,630,936
12	8,587,782
13	8,544,843
14	8,502,119
15	8,459,608
16	8,417,310
17	8,375,223
18	8,333,347
19	8,291,681
20	8,250,222

Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will deliver to Purchaser a report that shows the actual annual kWh production from the System for the prior year, and the Estimated Annual Production and the Minimum Guaranteed Output in accordance with Section 13, below, for the next succeeding year.



13. Minimum Guaranteed Output. The System is required to generate a specified minimum amount of electricity during each year of each two (2) consecutive years of the Term. Exhibit F (“Performance Test”) describes the methodology by which the Minimum Guaranteed Output will be determined for each two-year period. The Minimum Guaranteed Output shall be measured within sixty (60) days following the conclusion of each two-year period. The first two-year period shall end two (2) years following the Commercial Operation Date. Each subsequent two-year period will end every two years thereafter. The Minimum Guaranteed Output shall be equal to or greater than 85% of the Estimated Annual Production. If the System fails to generate the Minimum Guaranteed Output for any two-year period during the Term, Provider shall credit Purchaser an amount equal to the average of the kWh Rates (as set forth in Section 9) for the two applicable years *multiplied by* the difference of the Minimum Guaranteed Output *less* the actual electricity produced by the System during such two year period on the invoice or invoices immediately following the year during which the Minimum Guaranteed Output was not generated. The Parties agree that the payment described in this Section 13 is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System.
  
14. Allowed Disruption Time. Notwithstanding any provisions in Section 7.3 of the General Terms and Conditions to the contrary, Purchaser may, upon at least thirty (30) days’ advance written notice to Provider, request that the System be rendered non-operational for any reason for a maximum of 24 Daylight Hours per year of the Term. If Purchaser does not utilize the full 24 Daylight Hours of Allowed Disruption Time in a given year, then any unused portion of such Allowed Disruption Time will rollover and accrue to the subsequent year and be added to that year’s Allowed Disruption Time of 24 Daylight Hours; provided, that in no event shall the total Allowed Disruption Time during any year including any accruals from prior years exceed 72 Daylight Hours. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes. Provider shall be credited for the estimated lost electricity production the System would have produced during such Allowed Disruption Time toward satisfaction of its Minimum Guaranteed Output, as set forth in Section 13, such estimated lost production to be calculated in the same manner as set forth in Section 9. The Parties acknowledge that if as a result of a Public Safety Power Shutoff event, as determined necessary by the Local Electric Utility from time to time, Provider is unable to perform or Purchaser is unable to receive Energy Services during such event, Provider shall not be entitled to compensation from Purchaser pursuant to Section 7.3 of the General Terms and Conditions for lost revenue caused by the event.
  
15. Solar Module Cleaning.
  - a. Provider shall clean the solar modules of the System at Provider’s sole cost at scheduled times determined at Provider’s discretion at least twice per year. Provider may perform

additional cleaning activities at Provider's sole cost. Such additional cleaning activities will be scheduled by mutual consent of the Parties.

- b. Purchaser may request that Provider clean the solar modules at additional times upon not less than thirty (30) days' advance written notice for a cost of \$15,000 each cleaning for cleanings occurring in the first Term Year and escalating at 2% for each subsequent Term Year. Such amount shall be charged to Purchaser on subsequent monthly invoices (as defined in Section 9.2, Exhibit C General Terms and Conditions) following the occurrence of the cleaning. Such additional cleaning costs shall be specified separately on Provider's monthly invoices.
16. Sunlight Access. Purchaser will take reasonable steps as appropriate to avoid buildings, structures or other features from blocking or impeding sunlight from reaching the System.
17. Use of System. Purchaser will not use electrical energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48\_(a)(3)(A)(i) of the Internal Revenue Code.
18. Decommissioning Security. Provider shall purchase a bond, letter of credit or other security in the amount of the full cost of decommissioning the System within (60) sixty days of the commencement of the final five (5) remaining years in the Term. The amount of the security shall be determined by a licensed construction contractor experienced in decommissioning solar projects in the state of California or an independent engineer experienced in calculating decommissioning costs for solar photovoltaic projects in the state of California. The type and amount of the decommissioning security shall be subject to approval of the Purchase, which approval shall not be unreasonably withheld.
19. Interpretation. The captions and headings in this Agreement, including its exhibits and attachments, are strictly for convenience and shall not be considered in interpreting this Agreement.
20. Amendments. This Agreement may only be amended by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.
21. Notice. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section 21.

**Purchaser:**  
City Clerk  
CITY OF PETALUMA  
Post Office Box 61  
Petaluma, California 94953  
Phone: (707) 778-4360  
Fax: (707) 778-4554

**Provider:**  
Chris Woodington - Ellis Creek Solar  
LLC, Asset Manager  
ELLIS CREEK SOLAR, LLC, a  
Delaware Limited Liability  
Company  
1808 Wedemeyer St. Suite 221

Email: [cityclerk@cityofpetaluma.org](mailto:cityclerk@cityofpetaluma.org)  
And:  
CITY OF PETALUMA, PUBLIC WORKS  
AND UTILITIES DEPARTMENT  
Attn: Director of Public Works and  
Utilities  
11 English Street  
Petaluma, CA 94952  
Phone: 707-778-4546  
Email: [pubworks@cityofpetaluma.org](mailto:pubworks@cityofpetaluma.org)

San Francisco, CA, 94129  
Phone: 248-808-2015  
Fax: N/A  
Email:  
[accounting@whitepinerenew.com](mailto:accounting@whitepinerenew.com)  
cc: [evan@whitepinerenew.com](mailto:evan@whitepinerenew.com)

22. Insurance. Purchaser and Provider shall comply with the insurance requirements specified in Exhibit B.

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ENERGY SERVICES AGREEMENT – FLOATING SOLAR

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

PURCHASER  
CITY OF PETALUMA

PROVIDER  
Ellis Creek Solar LLC

\_\_\_\_\_  
Peggy Flynn, City Manager

\_\_\_\_\_  
Date

Approved as to form

\_\_\_\_\_  
Eric Danly, City Attorney

Attest

\_\_\_\_\_  
Kendall Sawyer, City Clerk

\_\_\_\_\_

\_\_\_\_\_  
Date

Approved as to form

\_\_\_\_\_

**Exhibit A –System Description and Preliminary Site Plan**

## **Exhibit A – System Description and Preliminary Site Plan**

### **System Description**

The proposed floating solar photovoltaic (PV) system involves the installation of a 10.45-acre floating solar array, including approximately 5.9 MW of direct current photovoltaic (PV) modules, on top of existing Oxidation Pond No. 3 at the Ellis Creek Water Recycling Facility (ECWRF). The proposed solar array would consist of 550-watt solar panels mounted and installed on high density polyethylene (HDPE) floats specifically designed for solar arrays sited on bodies of water. The array would be held together by a series of interlocking floats that form one large solar array island. To prevent array movement and adequately spread wind load, the floats would be securely anchored to the bank of the oxidation pond using mooring lines. The array would include aisle space in between sets of PV modules for maintenance and wireway routing.

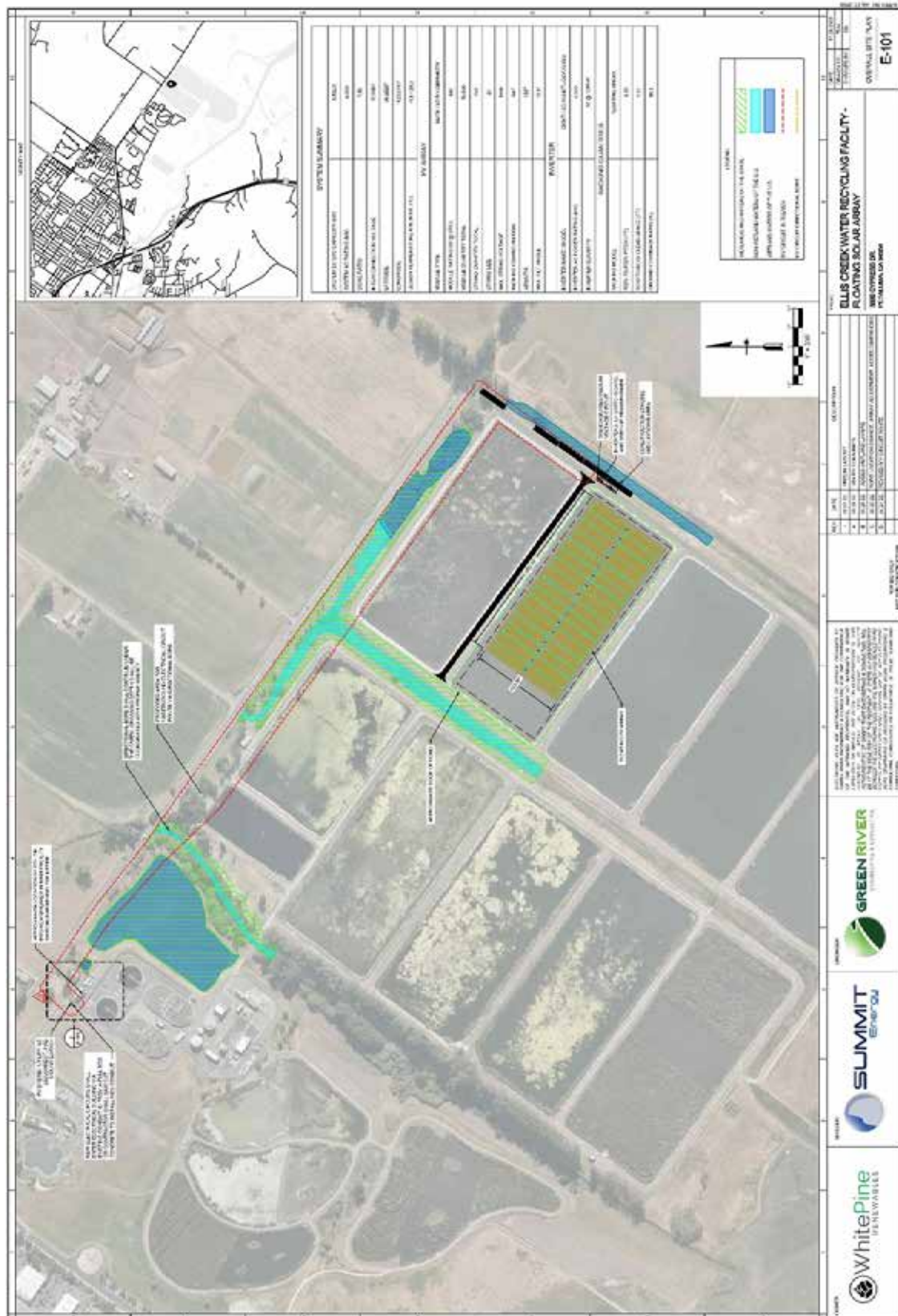
Primary electrical equipment associated with the Floating Solar Array Project, including inverters, a low-voltage switchboard, a step-up transformer, and other system components, would be located adjacent to the eastern corner of the pond in an elevated structure at least two feet above grade. Energy generated by the proposed Floating Solar Array Project would be collected via a wire collection system that leads to centralized direct current (DC) combiner boxes. The DC combiner boxes would be connected via underwater shielded cables that would feed into an electrical line located in a trench buried underneath an existing service road adjacent to Pond No. 3. This line would lead to the inverters located east of the pond, which would then feed into a medium voltage (MV) step-up transformer that would connect to an underground MV circuit.

The MV circuit would extend from the eastern corner of the pond toward Lakeville Highway, turn northwest to proceed along the northern perimeter of the property generally parallel to Lakeville Highway, and connect to the point of interconnection located immediately north of the existing secondary clarifiers. The circuit would tie-in to a new breaker in the main facility switchgear on the customer side of the meter. The circuit would proceed into the ECWRF existing electrical building via an existing conduit in from a pull box.

One underground/exposed single circuit vault would be installed along the circuit alignment at the northeastern corner of the ECWRF site, and approximately four underground single circuit vaults would be installed along the east-west portion of the circuit alignment. All vaults would be sited in previously disturbed areas and outside aquatic resources. Each underground vault would be approximately 35 square feet in size and four feet in depth.

The system would also include equipping the existing electrical building with a PV system utility, an alternating current disconnect, and a pad mount switch. Finally, there will be communication equipment installed in the same areas and along the same alignments as previously mentioned.

(For illustrative purposes only; does not represent final design)



## **Exhibit B - Insurance Requirements**



## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

Provider's, Provider's Contractor's, and their Subcontractors' performance of the Services under this Agreement shall not commence until Provider, Provider's Contractor and their Subcontractors shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the Purchaser's Attorney as to form and the Purchaser's Risk Manager as to carrier and sufficiency. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Provider, Provider's Contractor, and their Subcontractors shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Provider, Provider's Contractor, and their agents, representatives, employees and subcontractors.

#### **A. Required Minimum Scope of Insurance**

- ☒ Coverage shall be at least as broad as:  
Insurance Services Office Commercial General Liability (CGL) coverage:
  - a. Personal injury and property damage
- ☒ Insurance Services Office form covering Automobile Liability (any auto); if no company owned autos, non-owned and hired auto applies.
- ☒ Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☒ Professional Liability/Errors and Omissions: Required for Provider's Engineering, Procurement and Construction (EPC) Contractor and engineering firm of record for construction purposes only. This coverage will not be required once the system is operational.
- ☒ Property and applicable Builder's Risk Insurance against all risks of loss
- ☒ Pollution Liability Insurance: Required for Provider's EPC Contractor or subcontractors and Engineering firm

##### **A.1 Required for All Contracts**

- ☒ Policy Endorsements or Excerpts from the Policy Pursuant to Section D
- ☒ Copy of the Declarations and Policy Endorsements Page for the CGL Policy

#### **B. Minimum Limits of Insurance**

Provider shall maintain limits no less than:

- ☒ General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. \$4,000,000 general aggregate,
- ☒ Products/Completed Operations: \$2,000,000 per occurrence/aggregate.
- ☒ Automobile Liability: \$1,000,000 Combined Single Limit for bodily injury and property damage. Including hired and non-owned auto coverage
- ☒ Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.  
Bodily Injury by Disease - \$1,000,000 policy limit.  
Bodily Injury by Disease - \$1,000,000 each employee.
- ☒ Professional Liability/Errors and Omissions: \$1,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and

must be before the date of the Agreement or the beginning of the contract work. This policy is required for Provider's EPC Contractor and engineering firm and will stay in force for no less than three years after completion of the project.

- ☒ Crime/Employee Blanket Fidelity Bond - \$1,000,000: Contractor, at its own cost and expense, must maintain a Crime/Employee Blanket Fidelity Bond in the amount of \$1,000,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).
- ☒ Builder All Risk Insurance: Full replacement cost.
  - Provider shall procure and carry adequate property insurance on the System which shall not be covered by Purchaser's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion based on the value of the System.
- ☒ Pollution legal liability with limits no less than \$1,000,000 per occurrence or claim and \$2,000,000 policy aggregate. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work. This policy is required for Provider's EPC and engineering firm and will stay in force for no less than three years after completion of the project

#### **C. Purchaser Provided Coverage**

The Purchaser shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions:

- ☒ Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence
- ☒ Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☒ Purchaser shall procure and purchase adequate property insurance for the Licensed Area, as defined in the Site License Exhibit C Attachment A.

#### **D. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the Purchaser. At the option of the Purchaser, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Purchaser, its officers, officials, employees, and volunteers; or the Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured (Provider) or the Purchaser.

Purchaser reserves the right to review any and all of the required insurance policies, declaration pages, and/or endorsements, but has no obligation to do so. Purchaser's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or Purchaser's failure to identify any insurance deficiency shall not relieve Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

## **E. Other Insurance Provisions**

All required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. The Insurance obligations under this agreement shall be the greater of 1) all the Insurance coverage and limits carried by or available to the Provider; or 2) the minimum Insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the Purchaser. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of the Provider under this agreement.

Note: Coverage for operational will be the same requirement as construction, except there shall not be a requirement for pollution or professional liability. The builder's risk will change to an operational property policy.

2. Additional Insured: Provider shall include Purchaser, listed as The City of Petaluma, its officers, officials, employees, agents and volunteers as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Provider's; products and completed operations of the Provider's; premises owned, occupied or used by the Provider; or automobiles owned, leased, hired or borrowed by the Provider. The coverage shall contain no special limitations on the scope of protection afforded to the Purchaser, its officers, officials, employees, agents or volunteers. Additional insured is also required for completed operations purposes for a time period no less than three years.
3. Purchaser shall include Provider, ELLIS CREEK SOLAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, a wholly owned subsidiary of White Pine Development, LLC as an additional insured as its interest may appear.
4. Primary and Non-Contributory: For any claims related to this project, the Provider's insurance coverage shall be primary insurance as respects to Purchaser, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Purchaser, its officers, officials, employees, agents or volunteers shall be excess of the Provider's insurance and shall not contribute with it.
5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Purchaser, its officers, officials, employees, agents or volunteers.
6. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Purchaser.
8. Waiver of Subrogation: Provider agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Purchaser regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the Services to do likewise.
9. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this

- Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
10. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Purchaser before the Purchaser's own insurance or self-insurance shall be called upon to protect it as a named insured.
  11. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under this Exhibit is being maintained as required.
  12. Provider shall notify Purchaser of the replacement value they have placed on the System and the level of property insurance coverage purchased.

**F. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**G. Verification of Coverage**

**NOTE: The Purchaser is now using an online insurance program, PINS Advantage. Once you have been awarded a contract with the Purchaser, you will receive an e-mail from PINS Advantage/Purchaser requesting that you forward the e-mail to your insurance agent(s).** Provider shall furnish Purchaser with Certificate of Insurance along with Declarations and Endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Purchaser before the Services commence.

## **Exhibit C – General Terms and Conditions**

**EXHIBIT C**  
**TO ENERGY SERVICES AGREEMENT BETWEEN ELLIS CREEK SOLAR LLC AND**  
**THE CITY OF PETALUMA**

**GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions together with their attachments are a part of the Energy Services Agreement between Ellis Creek Solar LLC and the City of Petaluma pursuant to Section 2.0 of the Agreement. The Agreement includes all of its exhibits.

**1.0 DEFINITIONS**

The terms defined in Section 3 of the Energy Services Agreement shall also apply to and have the same meaning in this Exhibit. In addition to the terms defined in Section 3 of the Energy Services Agreement and elsewhere in the Agreement, the following words and phrases shall have the following meanings:

- 1.1. “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.
- 1.2. “Applicable Law” means any applicable constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- 1.3. “Assign” or “Assignment” means the sale or transfer of the Agreement or any interest in the Agreement.
- 1.4. “Building and Electrical Permit Receipt Date” means the date on which the building and electrical permits for the System are received by Provider.
- 1.5. “Bankruptcy Event” means that (i) a Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof.
- 1.6. “Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Petaluma, California are required or authorized by Applicable Law to be closed for business.

- 1.7. “Commencement of Construction” means the date following Provider’s issuance of “Construction Notice to Proceed” to the EPC Contractor pursuant to the EPC Contract when work commences on the Premises for construction of the System.
- 1.8. “Commercial Operation” means operation of the System interconnected with the Local Electric Utility as approved by the Local Electric Utility in accordance with Section 6.3(b) of this Exhibit.
- 1.9. “Commercial Operation Date” means the date following the Local Electric Utility’s approval of the System for interconnected operation and Provider’s satisfaction of the Conditions Precedent to Commercial Operation Date in accordance with Section 6.4(b) of this Exhibit, as confirmed by the Purchaser.
- 1.10. “Commercial Operation Date Liquidated Damages Expiration Date” means twelve months after the Guaranteed Commercial Operation Date.
- 1.11. “Confidential Information” means business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System of one of the Parties that that party keeps confidential, has labeled as “Confidential Information” of that Party, and that that party has provided to the other Party and that the receiving Party has agreed to accept subject to the terms of this Agreement in accordance with Section 19.1 of this Exhibit.
- 1.12. “Construction Commencement Liquidated Damages Expiration Date” means six months after the Guaranteed Construction Start Date.
- 1.13. “Delay Liquidated Damages” means the amounts due from Provider to Purchaser in accordance with Section 4 of this Exhibit, for failure to achieve (i) Commencement of Construction by the Guaranteed Construction Start Date and/or (ii) Commercial Operation by the Guaranteed Commercial Operation Date.
- 1.14. “Disruption Period” means the time during which a disruption or outage in System production caused by an act or omission of the Purchaser or Purchaser’s employees, Affiliates, agents or contractors is in effect pursuant to Section 7.3 of these General Conditions.
- 1.15. “Design Drawing Approval Date” means the date on which the 90% Issued For Permit (IFP) drawing set is approved by Purchaser.
- 1.16. “Early Termination Date” means the date on which the Agreement terminates prior to the expiration of the then applicable Term.
- 1.17. “Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.1.
- 1.18. “Effective Date” has the meaning set forth in the preamble to the Agreement.
- 1.19. “Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.
- 1.20. “Environmental Documents” means all reports, agreements, plans inspections, tests, studies and other materials that are known to and in the possession of the Purchaser

concerning the presence of hazardous materials at, from, or on the premises, including, but not limited to, soil reports, design drawings, environmental reports, sampling results or other documents relating to hazardous materials that have been identified or may be present on or at the Premises pursuant to Section 22.2(d) of this Exhibit.

- 1.21. “Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment including the California Environmental Quality Act and National Environmental Policy Act, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.
- 1.22. “Estimated Remaining Payments” means as of any date, the estimated remaining Energy Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.
- 1.23. “Expiration Date” means the last date of the Initial Term or the final Renewal Term, if any, of this Agreement, as those terms are defined in Section 3 and 5 of the Agreement.
- 1.24. “Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated 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. Fair Market Value of the System will be determined pursuant to Section 3(a)(ii) of this Exhibit.
- 1.25. “Financing Party” means, as applicable (i) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Provider (or an Affiliate of Provider) with respect to the System, or (ii) any Person acquiring a direct or indirect interest in Provider’s interest in this Agreement or the System as a tax credit investor.
- 1.26. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Provider or as a result of such party’s failure to comply with a collective bargaining agreement); and (v) action or inaction by a Governmental Authority (other than Purchaser). A Force Majeure Event shall not (i) consist solely of the economic hardship of either Party or (ii) excuse Purchaser from making payments under this Agreement for any Energy Services received.



- 1.27. “Global Horizontal Irradiance” means the total irradiance from the sun on a horizontal surface on Earth. It is the sum of direct irradiance (after accounting for the solar zenith angle of the sun z) and diffuse horizontal irradiance.
- 1.28. “Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any authorized Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.
- 1.29. “Governmental Authority” means any federal, state, regional, county, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.
- 1.30. “Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.
- 1.31. “Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof at the Premises in accordance with Section 6.1.
- 1.32. “Invoice Date” means the first date of each month following the commercial operation date pursuant to Section 9.2.
- 1.33. “Licensed Area” means those portions of the Premises where the Provider is authorized to conduct construction, installation, operation, maintenance and if applicable removal of the System in accordance with Section 2.2 Attachment A of these General Conditions.
- 1.34. “Lien” means any mortgage, pledge, mechanics,’ labor or materialman’s lien, stop notice, charge, security interest, encumbrance or claim of any nature on or with respect to the Premises or any interest therein, to the extent such lien arises from or is related to Provider’s performance or non-performance of its obligations hereunder pursuant to Section 11.1(d).
- 1.35. “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.
- 1.36. “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).
- 1.37. “Option Price” means i) during the initial term, the price corresponding to the Term year listed in the Table in Section 3.0(a)(i); or ii) after the Initial Term, the Fair Market Value of the System.

- 1.38. “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- 1.39. “Pre-existing Environmental Conditions” means any: (i) violation of, breach of or non-compliance with any Environmental Laws with respect to the Premises that first existed, arose or occurred prior to Provider’s commencement of construction at the Premises and (ii) the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred prior to Provider’s commencement of construction at the Premises.
- 1.40. “Premises License” means the license granted by Purchaser to Provider to access and use the Premises for development, construction and operation of the System and the delivery of the Energy Services during the Term in accordance with Section 2.0 and Exhibit A of these General Terms and Conditions.
- 1.41. “Provider Default” means any of the following: A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; or (iii) Provider breaches any material representation, covenant or other term of this Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser’s written notice of such breach and Provider fails to so cure and if a longer cure period is needed, such longer cure period to be agreed to by the parties, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- 1.42. “Purchase Date” means the Business Day six years or more after the Commercial Operation Date of which Purchaser has given Provider notice in accordance with Section 18 of the Agreement and Section 3 of these General Terms and Conditions that Purchaser intends to exercise Purchaser’s option to purchase the System pursuant to Section 3 of these General Terms and Conditions.
- 1.43. “Purchaser Default” means any of the following: (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider’s notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, such longer cure period not to exceed ninety (90) days; or (iii) Purchaser fails to pay Provider any undisputed amount due Provider under this Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.
- 1.44. “Purchaser Indemnified Parties” means Purchaser, its permitted successors and assigns and Purchaser’s officials, officers, and employees.
- 1.45. “Representative” means the Parties’ officials, officers, directors, members, managers, employees, agents, contractors, consultants, Affiliates, lenders (existing or potential), investors (existing or potential) and potential third-party assignees of this Agreement or third-party acquirers of Provider or its Affiliates (provided and on condition that such potential third-party assignees or acquirers are bound by a written agreement

restricting use and disclosure of Confidential Information) whose access to Confidential Information is reasonably necessary for the Parties fulfillment of their obligations or enjoyment of the benefits of this Agreement.

- 1.46. “Security Interest” means the first-party perfected interest that may be granted in the System to a Financing party as collateral securing the financial arrangements for the System.
- 1.47. “Site-Specific Requirements” means the site-specific information and requirements set forth in Exhibit E of the Agreement.
- 1.48. “Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.
- 1.49. “System-based Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits, rebates, and all other related subsidies and incentives.
- 1.50. “Termination Date” means the date on which Agreement ceases to be effective by action of one or both of the Parties in accordance with Section 2 below, following notice in accordance with Section 18 of the Agreement.

Interpretation. The captions or headings in this Agreement, including these - General Terms and Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Singular words in this Agreement shall be interpreted as plural, and plural words shall be interpreted as singular, as the context may require. The words “include”, “includes”, and “including” mean include, includes, and including without limitation. The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Sections” refer to Sections of these General Terms and Conditions.

## 2.0 TERMINATION.

### 2.1 Termination By Purchaser.

(a) Not for cause. Purchaser may terminate this Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days’ prior written notice. If Purchaser terminates this Agreement prior to the Expiration Date of the Initial Term pursuant to this paragraph, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth in this section, and Provider shall cause the System to be disconnected and removed from the Premises in accordance with Section 2.2 below. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider’s actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Provider’s actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser’s rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider’s actual damages. Upon Purchaser’s payment to Provider of the Early Termination Fee, this Agreement shall terminate without further action by the Parties. Following the Initial Term, the Early Termination Fee amount shall be deemed to be the Fair Market Value (as described in Section 3(a)(ii)).

### Early Termination Fee

Early Termination Occurs in Year:	Early Termination Fee
On the Effective Date and prior to the Design Drawing Approval Date	\$4,046,500
On the Design Drawing Approval Date and prior to the Building and Electrical Permit Receipt Date	\$6,199,500
On the Building and Electrical Permit Receipt Date and prior to the first anniversary of the Commercial Operation Date	\$15,643,396
2	\$14,904,447
3	\$14,200,403
4	\$13,529,616
5	\$12,890,516
6	\$9,304,344
7	\$8,167,507
8	\$7,169,573
9	\$6,293,571
10	\$5,524,600
11	\$4,849,586
12	\$4,257,048
13	\$3,736,907
14	\$3,280,319
15	\$2,879,518
16	\$2,527,689
17	\$2,218,847
18	\$1,947,741
19	\$1,709,759
20	\$1,500,855
Note: Unless otherwise specified each year in the left-hand column is the number of years after the Commercial Operation Date.	

(b) For cause. Purchaser may terminate this Agreement for cause without any liability whatsoever (including the obligation to pay the Early Termination Fee pursuant to paragraph (a) above) within 30 days following receipt of written notice from Purchaser if any of the following are not cured within such 30 day period:

(i) Provider fails to achieve Commencement of Construction by the Construction Commencement Liquidated Damages Expiration Date,

(ii) Provider fails to commence Commercial Operation by the Commercial Operation Date Liquidated Damages Expiration Date.

If Purchaser terminates this Agreement for cause pursuant to this section following the commencement of any Installation Work on the Premises as of the date of termination, Provider will be required at Purchaser's option to return the Premises to its condition prior to commencement of the Installation Work or to reimburse the Purchaser for any costs reasonably incurred to return the Premises to its condition prior to commencement of the Installation Work.

2.2 Removal of System. Subject to Purchaser's purchase option pursuant to Section 3, upon the expiration or earlier termination of this Agreement, Provider shall, (a) at Provider's expense remove the System from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date and restore the Premises to substantially its original condition as of the Effective Date to Purchaser's reasonable satisfaction. At removal, all equipment shall be removed except buried conduit. Provider shall leave the Premises in neat and clean order, normal wear and excepted. If Provider fails to remove the System within ninety (90) days after the Termination Date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises in accordance with the requirements of this section at Provider's expense. Provider agrees to reimburse Purchaser its restoration and storage costs incurred in accordance with this section within 30 days of receipt of Purchaser's invoice.

2.3 Termination By Provider for cause.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, notwithstanding Provider's exercise of commercially reasonable efforts to avoid or mitigate such events or circumstances, Provider may provide notice that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, including but not limited to Provider's restoration of the Premises to the extent required by Section 2.2:

i. Provider determines, despite Provider's exercise of reasonable due diligence as described in Section 1.01E of Exhibit D.1 of the Agreement, to ascertain the suitability of the Premises for the construction and operation of the System, that the Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System, and Provider documents the insufficiency of the Premises to Purchaser's reasonable satisfaction.

ii. There exist conditions on the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date despite Provider's exercise of reasonable due diligence as described in Section 1.01E of Exhibit D.1 of the Agreement, and that Provider demonstrates to Purchaser's reasonable satisfaction that such conditions or construction requirements would materially increase the cost of Installation Work or materially, adversely affect the electricity production from the System as designed such that the Energy Service Payments specified in this Agreement will be inadequate to compensate the Provider.

iii. There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax

incentives in effect as of the Effective Date) that were not known or anticipated as of the Effective Date despite Provider's exercise of reasonable due diligence to ascertain the regulatory environment, and that Provider demonstrates to Purchaser's reasonable satisfaction would adversely affect the economics of the installation of the System for Provider and its investors such that the Energy Service Payments specified in this Agreement will be inadequate to compensate the Provider.

iv. Provider is unable to obtain financing for the System on terms and conditions satisfactory to it despite Provider's exercise of reasonable due diligence to obtain financing.

v. Provider has not received a Site License as described in Section 10 in the form of Attachment A of these General Terms and Conditions from Purchaser.

vi. There has been a material adverse change in the rights of Provider to construct the System on the Premises that was not known or anticipated as of the Effective Date despite Provider's exercise of reasonable due diligence to ascertain the Provider's rights to construct the System as described in Section 1.01E of Exhibit D.1 of the Agreement.

vii. Purchaser has determined that there are easements, CCRs or other land use restrictions, liens or encumbrances affecting the Premises that would materially impair or prevent the installation, operation, maintenance or removal of the System that were not known or anticipated as of the Effective date despite Provider's exercise of reasonable due diligence to ascertain such restrictions, as described in Section 1.01E of Exhibit D.1 of the Agreement.

(b) Amendments to cure Provider cause for termination. If any of the events or circumstances set forth in Section 2.3(a) have been established in accordance with that section, then Provider or Purchaser may propose modifications to the Agreement to address such events or circumstances to the Parties' reasonable satisfaction. If the Parties are unable to reach agreement on such modifications to the Agreement, Provider may terminate this Agreement as provided in Section 2.3(a) and shall restore the Premises in accordance with Section 2.2. If the Parties are able to reach agreement on modifications to the Agreement concerning events or circumstances set forth in Section 2.3(a), this Agreement shall be amended accordingly, and shall remain in full force and effect upon execution the amendment by both Parties.

2.4 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party may terminate this Agreement upon ninety (90) days' prior written notice to the other Party. If at the end of such ninety (90) day period such Force Majeure Event continues, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination, including but not limited to Provider's obligations to remove the System and restore the Premises as set forth herein), and Purchaser shall have no obligation to pay the Early Termination Fee.

### 3.0 Purchase Option.

(a) Purchaser shall have the option to purchase the System on the Purchase Date for the Option Price so long as a Purchaser Default shall not have occurred and be continuing. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Upon Purchaser notice that Purchaser is exercising its purchase option pursuant to this Section, the Option Price shall be determined as follows:

i. Purchase of System before the Expiration of the Initial Term.

Purchaser may exercise its option to purchase the System in accordance with this Section on any date proposed by the Purchaser that is six years or more after the Commercial Operation Date during the Initial Term. Purchaser is not permitted to purchase the System prior to the sixth anniversary of the Commercial Operation Date due to tax equity financing requirements. Each "Anniversary" in the table below refers to an anniversary of the Commercial Operation Date. During the Initial Term, the Option Price for any given year shall be the greater of the Fair Market Value (as described in Section 3(a)(ii)) or the Purchase Price set forth in the table below:

**Purchase Price During Initial Term**

<b>Purchase Date Occurs following:</b>	<b>Purchase Price</b>
6 <sup>th</sup> Anniversary	\$9,029,674
7 <sup>th</sup> Anniversary	\$7,892,837
8 <sup>th</sup> Anniversary	\$6,894,903
9 <sup>th</sup> Anniversary	\$6,018,901
10 <sup>th</sup> Anniversary	\$5,249,930
11 <sup>th</sup> Anniversary	\$4,574,916
12 <sup>th</sup> Anniversary	\$3,382,378
13 <sup>th</sup> Anniversary	\$3,462,237
14 <sup>th</sup> Anniversary	\$3,005,649
15 <sup>th</sup> Anniversary	\$2,604,848
16 <sup>th</sup> Anniversary	\$2,253,019
17 <sup>th</sup> Anniversary	\$1,944,177
18 <sup>th</sup> Anniversary	\$1,673,071
19 <sup>th</sup> Anniversary	\$1,435,089
20 <sup>th</sup> Anniversary	\$1,226,185

ii. Purchase after Expiration of the Initial Term.

Provider Determination of Fair Market Value. If Purchaser exercises its option to purchase the System after the expiration of the Initial Term, the Option Price shall be the Fair Market Value determined in accordance with this provision. Within thirty (30) days of receipt of Purchaser's notice that Purchaser intends to exercise its option to purchase the System following

the expiration of the Initial Term, Provider shall provide Purchaser the System Fair Market Value and all supporting documentation showing how the Fair Market Value was calculated. Purchaser shall then have thirty (30) days following receipt of the Fair Market Value and supporting documentation to confirm or retract in writing Purchaser's decision to exercise its purchase option or to dispute the determination of the Fair Market Value of the System in accordance with paragraph (c) below. In the event Purchaser confirms its exercise of its purchase option, the Parties shall promptly execute all documents necessary to cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and assign all vendor warranties for the System to Purchaser, and Purchaser shall pay the Option Price to Provider on the Purchase Date. Purchaser shall pay the Option Price in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under this Agreement. Upon execution of the title transfer and warranty assignment documents, and payment of the Option Price, in accordance with this section, this Agreement shall terminate without further action of the Parties. Payment of the Fair Market on Value shall be in lieu of and fully discharge any Early Termination Fee payments that otherwise may apply pursuant to Section 2.1(a). In the event Purchaser retracts its exercise of, or does not timely confirm, Purchaser's exercise of its purchase option, the terms of this Agreement shall continue in full force and effect as if Purchaser had not exercised its purchase option.

Resolution of Disputed Fair Market Value. If the Purchaser disputes the Fair Market Value provided by Provider in accordance with Section 3(a) within thirty (30) days of receipt of the Fair Market Value and supporting documentation from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry, including expertise and experience in valuing photovoltaic systems, resale markets for such systems and related Environmental Attributes not already owned by Purchaser. The appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System and shall set forth such determination in a written opinion delivered to the Parties. The Fair Market Value provided by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Nonetheless, if the Purchaser in good faith disputes the appraiser's valuation, Purchaser shall have the right to retract its exercise of its option to purchase the System. The cost of the appraisal shall be borne by Purchaser if the appraisal results in a Fair Market Value of the System equal to or greater than the Fair Market Value provided by Provider pursuant to Section 3(a). Otherwise, the Parties shall share equally the appraisal cost.

#### 4.0 Delay Liquidated Damages

If Provider fails to achieve Commencement of Construction by the Guaranteed Construction Start Date, subject to any extensions, Purchaser shall be entitled to Delay Liquidated Damages of \$750 per day until the Construction Commencement Liquidated Damages Expiration Date.

If Provider fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, subject to any extensions, Purchaser shall be entitled to Delay Liquidated Damages of \$750 per day until the COD LD Expiration Date.

The Parties agree that the payments described in this Section 4.0 are reasonable approximations of the damages suffered by Purchaser as a result of delays of the Commencement of Construction



and Commercial Operation, are bargained-for by the Parties, and shall be the Purchaser's sole and exclusive remedy hereunder for delays of Commencement of Construction and Commercial Operation (other than Purchaser's right to terminate this Agreement pursuant to Section 2.1(b)).

## 5.0 Milestone Extensions

The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if any of the following occurs notwithstanding Provider's exercise of commercially reasonable efforts to avoid or mitigate potential resulting delays of the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date (as applicable):

- (i) a request by the Purchaser to delay the Commencement of Construction, provided that any such request shall not exceed six months;
- (ii) A request by the Purchaser to delay the Commercial Operation Date shall be granted in Provider's sole and absolute discretion to the extent such request is made after Commencement of Construction;
- (iii) any local or regional Governmental Authority with jurisdiction over required permits for the System failing to issue building and/or electrical permits within forty-five (45) days after submission of complete applications therefor and diligent prosecution of such applications by Provider;
- (iv) a Force Majeure Event occurs that delays the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date;
- (v) delays by the Local Electric Utility requiring more than sixteen (16) months from signing of the Interconnection Agreement to complete all upgrades required by the System Impact Study; or
- (vi) the Local Electric Utility fails to issue Permission to Operate within ten (10) Business Days after all applicable inspections required by the applicable Governmental Authority have been approved.

## 6.0 CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM

6.1 Installation Work. Using one or more qualified contractors holding the appropriate licenses required in the City of Petaluma, Provider will be responsible for the design, engineering, installation and construction of the System substantially in accordance with the System description in Exhibit A of the Agreement, the requirements specified in Exhibit D – Technical Specifications of the Agreement, the Installation Requirements in Attachment C to these General Terms and Conditions, the City of Petaluma Living Wage Ordinance, Attachment D, and other applicable law. Purchaser shall have the right to review all construction plans and designs pursuant to Exhibit D, including engineering evaluations of the impact of the System. Provider shall perform the

Installation Work at the Premises within the hours specified in the Site License (Attachment A to these General Terms and Conditions) as described in Section 10 and Exhibit E of the Agreement in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical. Provider acknowledges and will comply with Purchaser's requirements for access to Premises in accordance with the Site License (Attachment A) and Exhibit E of the Agreement.

6.2 Approvals; Permits. Purchaser shall assist Provider in obtaining all necessary consents, approvals and permits required to fulfill Purchaser's obligations under this Agreement, including but not limited to those related to the Local Electric Utility, any Governmental Approval, any consents, waivers, approvals or releases required pursuant to any applicable contract, and environmental compliance requirements in Exhibit D.1, Scope of Work.

6.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with ASTM Standard E2848-13 as modified as appropriate by mutual consent of the Parties. Provider shall submit the testing procedures to the Purchaser with Commissioning Protocols as specified in Exhibit D.3. Provider shall provide Purchaser with reasonable advanced notice of such testing and shall permit Purchaser or Purchaser's representative to observe such testing. Purchaser's observation of such testing shall not be construed as approval of such testing or test results or as a waiver of any System testing requirements prescribed in the Agreement.

(b) If the results of System testing in accordance with this section indicate that the System is capable of providing the Energy Services, using such instruments and meters as have been installed for such purposes, the System has been approved for Commercial Operation by the Local Electric Utility, and the Provider has met the Conditions Precedent to the Commercial Operation Date in Section 6.4 below, then Provider shall send a written notice to Purchaser confirming the Commercial Operation Date.

6.4 Conditions Precedent to Commercial Operation Date.

The following conditions must be satisfied prior to the Commercial Operation Date

- a. Provider to submit all documentation to Purchaser identified in Table 3, Part 3 in Exhibit D.3.
- b. Provider shall have submitted commissioning documentation to Purchaser in accordance with Section 6.3 above.
- c. Provider shall have provided data acquisition system log-in access and credentials that provide full access (not "public portal view") to the AlsoEnergy PowerTrack application to Purchaser and representatives specified by Purchaser.
- d. All safety punch-list items must be accepted as complete by Purchaser.
- e. The Purchaser and Provider shall identify and agree to the punchlist items that shall be completed after Commercial Operation Date and the date by which such punchlist items must be complete.

6.5 Final Punchlist. Provider shall provide monthly updates on progress toward resolving punch-list items as determined pursuant to Section 6.4(e) until all are accepted as complete by Purchaser. If the Provider does not complete open punch-list items by the anniversary of the Commercial Operation Date, the Purchaser may suspend payments for Energy Services, until open punch-list items are accepted as complete by Purchaser. Provider shall submit EPC Contractor Notice of Completion to Purchaser upon completion of the final punch-list items.

## 7.0 SYSTEM OPERATIONS.

7.1 Provider as Owner and Operator. Subject to Purchaser's option to purchase the system pursuant to Section 3, the System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, any repair or maintenance costs incurred by Provider as a result of Purchaser's (including its agents', employees' or contractors') action or inaction, negligence, or breach of its obligations hereunder shall be reimbursed by Purchaser.

7.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed at the Premises. Such meter(s) shall meet the general commercial standards of the solar photovoltaic industry or the required standards of the Local Electric Utility and must be Western Renewable Energy Generation Information System (WREGIS) compatible.

7.2.1 Meter Testing. Provider shall provide certificates of calibration for all meters prior to the time of their installation. No meter will be placed in service for which Provider has not provided certificates of calibration. Provider shall test or arrange for all meters to be tested in accordance with the meter manufacturer's recommendations and repair or recalibrate as required. Provider shall bear all costs and expenses associated with each meter testing. Purchaser shall be notified at least ten (10) days in advance of such testing and shall have the right to have a Purchaser representative present during such tests. Provider shall provide Purchaser with detailed written results of all meter tests.<sup>1</sup>

### 7.2.2 Cost of Meter Repair.

(a) If meter testing in accordance with this section demonstrates that a meter was operating outside manufacturers recommendations, then Provider will pay for the cost of repairs or replacement necessary to restore the meter to proper working order.

(b) If a meter is found to be inaccurate by more than manufacturer's recommendations, invoices from the last date such meter was registering accurately shall be adjusted to reflect the under or over payment that occurred during the time the meter was operating outside its permitted calibration tolerance. The Purchaser shall provide a payment for the amount of under payments or Provider shall issue a credit for over payments during the time the meter was operating outside of

its permitted calibration tolerance within 60 days of the discovery of the inaccuracy. Purchaser shall not be obligated to pay interest on any payment due because a meter was operating outside of its allowable calibration tolerance.

7.2.3 Meter Data. Provider shall gather and maintain the data from all meters, including but not limited to, interval data registered at least once every fifteen (15) minutes, and shall make such data promptly available to Purchaser at Purchaser's request.

7.3 System Disruptions. Except for allowed disruptions pursuant to Section 14 of the Agreement, in the event that any act or omission (that is unrelated to damage caused by the System) of Purchaser or Purchaser's employees, Affiliates, agents or contractors requires the partial or complete temporary disassembly or movement of the System and/or results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Energy Services during such Disruption Period, and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced System-based Incentives, if applicable, during the Disruption Period. For the purpose of calculating Energy Services Payments and lost revenue for such Disruption Period, Energy Services for each month shall be deemed to have been produced at the average rate for the same month for which data exists (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).

## 8.0 TITLE TO SYSTEM.

8.1 Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. As the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of and approved by Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.

8.2 Environmental Attributes and System-Based Incentives. Purchaser's purchase of Energy Services includes, to the extent permitted under Applicable Law, Environmental Attributes (including but not limited to Renewable Energy Credits (RECs) registered under WREGIS), but does not include System-based incentives. Purchaser shall be solely responsible for taking all actions necessary for Purchaser to receive, use, and if applicable, transfer Environmental Attributes generated by the System, including without limitation obtaining and maintaining all Governmental Approvals required in connection with the same, establishing and maintaining an account with the applicable Governmental Authority or system administrator, and complying with any requirements of Applicable Law in connection therewith for the duration of the Term. Provider shall not be responsible for Purchaser's inability to receive, use or transfer any Environmental Attributes to the extent attributable to Purchaser's failure to comply with this section or to Purchaser's actions or inactions. System-based Incentives shall be owned by Provider or Provider's financing party for the duration of the System's operating life. Purchaser disclaims any right to System-based

Incentives based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably acceptable to Purchase that is reasonably necessary to fulfill the intent of this Section 8.2.

## 9.0 ENERGY SERVICE PAYMENTS.

9.1 Consideration. Purchaser shall pay to Provider a monthly Energy Services Payment for the Energy Services provided during each calendar month of the Term as set forth in the Agreement.

9.2 Invoice. Provider shall invoice Purchaser on or about the Invoice Date, commencing on the first Invoice Date after the Commercial Operation Date, for the Energy Services Payment due for the immediately preceding month. The final invoice shall reflect Energy Services provided through the Expiration Date or Termination Date. Invoices shall at a minimum include, (i) the amount of actual electricity produced by the System and delivered to the delivery point during the invoice period, (ii) the rates applicable to, and any charges incurred by, Purchaser under the Agreement, and (iii) the total amount due from Purchaser. Any additional costs or credits shall be specified in the invoice. Invoices shall be in accordance with the invoice format in Exhibit G and include Performance Test calculations pursuant to Exhibit F as an attachment. Invoices shall also include the status of System construction punch-list items in accordance with Section 6.4(e) of these General Terms and Conditions Exhibit C, until such items have been completed.

9.3 Time of Payment. Purchaser shall pay all undisputed amounts due within thirty (30) days after Purchaser's receipt of an invoice from Provider submitted in accordance with this section.

9.4 Method of Payment. Purchaser shall make all payments under this Agreement either (a) by electronic funds transfer in immediately available funds to the account designated by Provider from time to time or (b) by check timely delivered to the location designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate.

9.5 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations, including payment of undisputed amounts owed. If an amount disputed by Purchaser is subsequently determined by the Parties to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date the amount became past due until the date paid.

## 10.0 LICENSE TO PREMISES.

Purchaser shall grant to Provider a License conveying the rights necessary for Provider to use the Premises and occupy the Licensed Area for the installation, operation, maintenance, and removal of the System during the Term, including ingress and egress rights across the Premises to the Licensed Area and sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers

and facilities as reasonably necessary for Provider and its employees, contractors and subcontractors to perform the Energy Services in accordance with the terms of the Agreement and Exhibit A to these General Conditions. The Parties shall execute, deliver and notarize the License Agreement in the form attached hereto as Attachment A, which the Parties or a Party may record in the official records of Sonoma County subsequent to Provider receiving the building, electrical and any other permits necessary to commence work on the System.

#### 11.0 REPRESENTATIONS & WARRANTIES.

11.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;

(c) it has taken all requisite corporate or other action necessary to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy and other similar laws now or hereafter in effect;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out its responsibilities pursuant to this agreement;

(f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(g) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, that are not identified in the Agreement.

11.2 Representations of Purchaser. Purchaser represents and warrants to Provider as of the Effective Date that:

(a) Purchaser acknowledges that it has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a Security Interest in the System to a Financing Party;

(b) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;

(c) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein;

(d) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement;

(e) To Purchaser's knowledge, Purchaser has disclosed to Provider (i) all Environmental Documents in Purchaser's possession or control, (ii) all, Governmental Approvals or other restrictions imposed under Applicable Laws of which Purchaser is aware with respect to the use of the Premises that could affect the construction and operation of the System, and (iii) all environmental reports, studies, data or other information within the Purchaser's possession or control relating to the use of the Premises by Provider;

(f) To Purchaser's knowledge, the Premises is in compliance with Environmental Laws, and that Purchaser holds and is in compliance with all Governmental Approvals required for the ownership and any current operations or activities conducted at the Premises; and

(g) Purchaser has identified in the Agreement and delivered to Provider all material reports and information concerning the presence or release of Hazardous Materials on, in or under the Premises in Purchaser's possession or control.

## 12.0 FORCE MAJEURE.

Except as otherwise specifically provided in the Agreement, neither Party shall be considered in default of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided, the Party claiming relief under this Article 12 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Energy Services delivered to Purchaser prior to the Force Majeure Event performance interruption. Subject to Section 2.4 below, the Parties agree that to the extent permitted by Applicable Law, the Term of this

Agreement shall extend on a day for day basis for every day in which the occurrence of a Force Majeure Event has affected either Party's performance of its obligations hereunder.

### 13.0 LIMITATION OF LIABILITY.

13.1 Except with respect to indemnification of third-party claims pursuant to Article 16 of these General Terms and Conditions, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

13.2 A Party's maximum liability to the other Party under this Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, the limits of liability under this Section 13.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, property damage or environmental claims, and (ii) any obligation of Purchaser to pay Energy Service Payments, the Early Termination Fee or the Option Price.

### 14.0 DEFAULT.

14.1 Provider Default and Purchaser Remedies. If a Provider Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate this Agreement with no penalty or liability whatsoever; including, but not limited, to the Early Termination Fee, and exercise any other remedy it may have at law or equity or under this Agreement, including purchasing the System under Section 3.

14.2 Purchaser Default and Provider's Remedies. If a Purchaser Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, (i) Provider shall be entitled to receive from Purchaser the Early Termination Fee set forth in Section 2.1(a), Table 1 and any other amounts previously accrued under the Agreement and then owed by Purchaser to Provider, and (ii) Provider may exercise any other remedy it may have at law or equity or under this Agreement.

14.3. Removal of System. Upon any termination of this Agreement pursuant to this Section 14 and payment of the Early Termination Fee (if applicable), Provider will remove the System pursuant to Section 2.4 hereof.

### 15.0 RESERVED.

### 16.0 INDEMNITY.

16.1 Mutual Indemnification. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims,



including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from (1) any Claim (as defined in Section 16.2) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 11 of these General Terms and Conditions and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with the Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 16.1(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 16.3 below.

16.2 Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 16.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 16.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

### 16.3 Environmental Indemnification.

(a) Provider Indemnity. Provider shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Materials to the extent deposited, spilled or otherwise caused by Provider or any of its contractors, agents or employees.

(b) Purchaser Indemnity. Purchaser shall indemnify, defend and hold harmless all of Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Provider or any of its contractors, agents or employees.

## 17.0 ASSIGNMENT.

17.1 Assignment by Provider. Provider shall not assign the Agreement without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, Purchaser agrees that Provider may assign this Agreement to an Affiliate of Provider or

any initial Financing Party upon reasonable notice to the Purchaser. In the event that Provider identifies a secured Financing Party in the Agreement, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Attachment B of these General Terms and Conditions and agrees to provide such estoppels, acknowledgments and opinions of counsel as Provider may reasonably request from time to time. Any Assignment by Provider without obtaining the prior written consent and release of Purchaser, when such consent is required by this Section 17.1, shall not release Provider of its obligations hereunder.

17.2 Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in the Agreement, or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) The collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under this Agreement, as consented to under Section 17.1 of this Agreement.

(b) That the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in this Agreement.

(c) That it has been advised that Provider may grant a first priority perfected security interest in the System to the Financing Party and that the Financing Party may rely upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

17.3 Assignment by Purchaser. Purchaser shall not assign this Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

## 18.0 NOTICES.

18.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in the Agreement, or at such other address as may be designated in writing to the other Party from time to time.

18.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, by facsimile, electronic mail (with PDF notice attached), or by commercial overnight delivery service, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile or electronic mail (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

18.3 Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first-class mail postage prepaid.

## 19.0 CONFIDENTIALITY.

19.1 Confidentiality Obligation. Subject to the requirements of the California Public Records Act, if either Party provides Confidential Information to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its Representatives whose access to the Confidential Information is reasonably necessary. 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. 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.

19.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) Becomes publicly available other than through the receiving Party;
- (b) Is required to be disclosed by a Governmental Authority or under Applicable Law, including but not limited to the California Public Records Act, or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) Is independently developed by the receiving Party; or
- (d) Becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

19.3 Goodwill and Publicity. Neither Party shall use the 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, and comment upon, any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Purchaser and Provider may, in their sole discretion, take photographs of the installation process of the System and/or the completed System, and may use such images (regardless of media) in

their marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles.

19.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party may be irreparably injured by a breach of this Section 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 any breach of the provisions of this section.

## 20 THIRD PARTY BENEFICIARIES.

The Financing Parties, as defined in this agreement, shall be third-party beneficiaries in accordance with Civil Code Section 1559 as amended from time to time. Other than Financing Parties of whom Provider has provided notice to Purchaser in accordance with Section 17.1, and as otherwise expressly provided herein, the Agreement is not intended to create and shall not be construed to create in any third parties any rights whatsoever under the Agreement.

## 21 TAXES AND GOVERNMENTAL FEES.

21.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Energy Services to Purchaser (other than income taxes imposed upon Provider), except for possessory use taxes that may apply to Provider as a result of the License granted to Provider in accordance with Section 10 of these General Terms and Conditions. Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts, real property or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Energy Services. This Section 21.1 excludes taxes specified in Section 21.2. The Parties hereby acknowledge that as of the Effective Date Purchaser is a tax-exempt entity, and as a result of such tax-exempt status, Purchaser has no tax obligation to any Governmental Authority as of the Effective Date and no such obligation on the part of the Purchaser is created pursuant to this Agreement.

21.2 Provider Obligations. Subject to Section 21.1 above, Provider shall be responsible for all income taxes or similar taxes imposed on Provider's revenue due to the sale of electricity under the Agreement, personal property taxes imposed on the System, and any increase in real estate taxes with respect to the Premises caused by the existence of the System on the Premises.

## 22. PARTY COVENANTS.

22.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if Provider becomes aware of any damage to or loss of the use of the System or occurrence that could

reasonably be expected to adversely affect the System, (ii) immediately notify Purchaser if Provider becomes aware of any occurrence or circumstance relating to the System or the Premises that poses a significant risk to the public health or safety, the environment, the System or the Premises. In the event of damage to the Premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair the Premises to the condition existing prior to such damage to the extent reasonably feasible.

(b) Governmental Approvals. While providing the Installation Work, Energy Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained by Provider to enable Provider to lawfully perform its obligations under the Agreement.

(c) Health and Safety. Provider shall take all reasonable and necessary safety precautions regarding the Installation Work, Energy Services, and System Operations so as to comply with all Applicable Laws pertaining to the health and safety of persons and property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria customarily followed by System integrators in the United States.

(d) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, or Lien on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien; provided, Provider shall have the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such Lien from title to the Premises or that assure that any adverse judgment with respect to such Lien will be paid without affecting title to the Premises.

(e) System Condition. Provider shall take all actions reasonably necessary, including but not limited to repair and maintenance, to ensure that the System is capable of operating at a commercially reasonable continuous rate in accordance with the Agreement throughout the Term.

(f) Compliance with Environmental Laws. Notwithstanding anything to the contrary in this Agreement, Provider shall perform the Installation Work, Energy Services, and System Operations in compliance with the requirements of all applicable Environmental Laws.

(g) Environmental Conditions. Provider shall promptly notify Purchaser if it becomes aware of any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises.

(h) Production Data. Provider shall provide Purchaser with access to System production data in electronic format, such as tabular Excel or csv with each production unit in a

separate cell. Production data may be delivered monthly or by granting Purchaser access to a web portal.

22.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if Purchaser becomes aware of any damage to or loss of the use of the System or occurrence that could reasonably be expected to adversely affect the System, (ii) immediately notify Provider if Purchaser becomes aware of any event or circumstance that poses an imminent risk to public health or safety, the environment, the System or the Premises.

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

(c) Consents and Approvals. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Provider. Purchaser shall provide to Provider copies of all Governmental Approvals applicable to the Premises, other than those obtained by Provider or to which Provider is a party.

(d) Environmental Documents. On or before the Effective Date of the Agreement Purchaser shall identify and unless previously delivered, Purchaser shall, to the extent the same are known and in the possession or control of Purchaser, deliver to Provider copies of all reports, agreements, plans, inspections, tests, studies or other materials concerning the presence of Hazardous Materials at, from or on the Premises including, but not limited to, soil reports, design drawings, environmental reports, sampling results or other documents relating to Hazardous Materials that have been identified or may be present on, in or under the Premises (collectively, the "Environmental Documents"). Thereafter, Purchaser agrees to provide copies of any new Environmental Documents within ten (10) days of receipt of same. Purchaser hereby agrees to furnish such other documents in Purchaser's possession or control with respect to Governmental Approvals compliance with Environmental Law or Hazardous Materials with respect to the Premises as may be reasonably requested by Provider from time to time.

(e) Compliance with Environmental Laws. Notwithstanding anything to the contrary in this Agreement, Purchaser shall operate and maintain the Premises to comply with the requirements of all applicable Environmental Laws.

(f) Environmental Conditions. Purchaser shall promptly notify Provider if it becomes aware of any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises. In no event shall Provider be responsible for the existence of any Hazardous Materials existing at the Premises prior to the Effective Date.

## 23 MISCELLANEOUS.

23.1 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the Energy Services industry in Northern California shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

23.2 Exclusive Remedies. To the extent that this Agreement sets forth specific remedies for any claim or liability, such remedies are the affected Party's sole and exclusive remedies for such claim or liability, whether arising in contract, tort (including negligence), strict liability or otherwise.

23.3 [Reserved].

23.4 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment of any such provision, in any other instance or of any other provision in any instance.

23.5 Survival. The obligations under Section 2.2 (Removal of System), Article 13 (Limitation of Liability), Article 18 (Notices), Article 19 (Confidentiality), Article 21 (Taxes and Governmental Fees), Section 22.1 (Provider Covenants), Sections 22.2(d), (e), (f), (g) and (h) (Purchaser Covenants), Article 23 (Miscellaneous), all payment or indemnification obligations accrued prior to termination or expiration of the Agreement, or pursuant to other provisions of the Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

23.6 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any choice of law principles. The Parties agree that the courts of the State of California and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under this Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under the Agreement any courts described in this Section.

23.7 Severability. If any section, term, sentence, clause, phrase or word of the Agreement is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of the Agreement. The Parties hereby declare that they would have approved and entered the Agreement and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful, or otherwise invalid.

23.8 Relation of the Parties. The relationship between Provider and Purchaser shall be that of independent parties and not that of partners, agents, or joint ventures for one another, and

nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between the Parties for any purposes, including federal income tax purposes.

21.9 Successors and Assigns. The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

21.10 Counterparts. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

23.11 Electronic Execution and Delivery. The Agreement may be duly executed and delivered by a Party electronically, and such electronically executed copy of the Agreement shall be deemed an original for all purposes.



**Attachment A**

Form for Site License

## **LICENSE AGREEMENT**

This License Agreement is made as of \_\_\_\_\_, 2022, by and between the City of Petaluma, a California municipal corporation and charter city (referred to as the Purchaser) and Ellis Creek Solar LLC, a Delaware Limited Liability Company (referred to as the Provider). Collectively Purchaser and Provider are referred to in this License Agreement as the “parties,” and singularly as a “party.”

### **RECITALS**

A. Purchaser is the owner of certain real property located at 3890 Cypress Drive and 4400 Lakeville Highway, Petaluma, California, 94954, APNs 068-010-033, 068-010-034, 068-010-025, 068-010-023, and 068-010-024, which property is improved with facilities comprising the Ellis Creek Water Recycling Facility, including headworks, oxidation ditches, anaerobic digesters, solids handling equipment, treatment wetlands, tertiary filtration, ultraviolet disinfection, compressed natural gas generating equipment, oxidation ponds and other improvements (referred to as the Facilities), and which property (referred to as the Premises) is further described in **Exhibit A** which is attached to and made a part of this License Agreement.

B. Concurrent with entering this License Agreement, Purchaser and Provider are entering an Energy Services Agreement (referred to as the Agreement), whereby Provider will sell and Purchaser will purchase energy produced by a photovoltaic System designed, installed, owned and operated by Provider on the Premises, and related services of Provider pursuant to the Agreement. This License Agreement is Attachment A to Exhibit C, the General Terms and Conditions, of the Agreement and comprises part of the Agreement.

C. As required by Section 10.0 of the General Terms and Conditions, Purchaser is obligated to convey to Provider a license authorizing the Provider to install and operate the System and perform Energy Services on the Premises in fulfillment of Provider’s Energy Services obligations pursuant to the Agreement.

D. The purpose of this License Agreement is to establish the terms by which Provider shall occupy a part of the Premises as necessary and convenient to install and operate the System and perform Energy Services on the Premises pursuant to the Agreement while the Purchaser continues operation of the Facilities such that the Energy Services do not significantly impede

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operation of the Facilities and the operation of the Facilities do not significantly impede delivery of the Energy Services.

E. The terms used in this License Agreement that are defined in the Agreement, including those terms defined in the General Terms and Conditions, have the same meaning as and are subject to the definitions in the Agreement, including the General Terms and Conditions.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Purchaser agree as follows:

**1. Licensed Premises.** The portion of the Premises licensed to Provider for installation and operation of the System and performance of Energy Services pursuant to this License Agreement (referred to as the Licensed Area) is described in **Exhibit B** which is attached to and made a part of this License Agreement.

**2. Grant of License.** Purchaser hereby grants Provider a non-exclusive license (referred to as the Premises License) for installation and operation of the System and performance of Energy Services within the Licensed Area and related ingress and egress to the Licensed Area on the Premises by authorized officials, board members, employees, contractors, and invitees, of the Provider, including, but not limited to, the EPC Contractor as defined in the Agreement at the times, for the uses and in accordance with the requirements specified in **Exhibit C** (referred to as the Licensed Use), which is made a part of this License Agreement. Provider shall install the System on the Premises in accordance with Sections 6 and 7 of Exhibit C, the General Terms and Conditions of the Agreement, and shall operate and maintain the System in accordance with the Agreement, and such installation and operation and maintenance shall be part of the Licensed Use in accordance with **Exhibit C**. The Premises License granted pursuant to this License Agreement is non-transferrable, except as otherwise provided in the Agreement, and irrevocable, except that the Premises License may expire or be terminated in accordance with of Section 2.0 of the General Terms and Conditions.

**3. No Grant of Property Interest.** Provider understands and agrees that the rights conveyed under this License Agreement are solely license rights. Provider further understands and agrees that this License Agreement does not convey any real property interest, such as a leasehold, easement or estate in the Licensed Area or the Premises.

**4. Term, Expiration and Termination.** This License Agreement shall remain in effect for as long as Provider is complying with this License Agreement and the Agreement remains in effect. The Premises License and this License Agreement will expire and cease to be of any effect without further action of the Parties upon the expiration or earlier termination of the Agreement; except that, provisions in this License Agreement listed in Section 23.5, Survival, of the General Terms and Conditions shall survive the expiration or earlier termination of the Agreement in

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accordance with Section 23.5. This License Agreement may only be terminated by termination of the Agreement in accordance with Section 2.0 of the General Terms and Conditions.

**5. Notice of Non-Compliance, Cure and Suspension.** Although this License Agreement may only be terminated in accordance with Section 2.0 of the General Terms and Conditions, the Premises License may be suspended upon notice in accordance with this Section for Grantee's failure to comply with the terms of this License Agreement, and such suspension shall not constitute a Disruption Period pursuant to the General Terms and Conditions. If Purchaser reasonably concludes that Provider is not in compliance with the requirements of this License Agreement, Purchaser shall promptly provide Provider notice of such non-compliance, and the required cure. The Provider shall have fifteen (15) days to cure the Provider's non-compliance. If cure will reasonably require more than fifteen days, the Purchaser will permit Provider such additional time as is reasonably necessary to cure Provider's non-compliance; except that, in the event Provider's non-compliance with the terms of this Agreement present and imminent safety threat or threat to the Facilities or Facilities operations, or if Provider fails to maintain in effect the insurance required pursuant to Exhibit B of the Agreement, the Purchaser may suspend this License Agreement immediately upon notice to Provider in accordance with this Section until the non-compliance is cured or the required insurance is in effect.

**6. Assignment, Sublicensing or Delegation.** Provider may not assign or sublicense Provider's rights under this License Agreement or delegate any of Provider's obligations under this License Agreement except as permitted in Section 17.0 of the General Terms and Conditions. Purchaser may treat any purported assignment, sublicense or delegation other than as permitted in Section 17.0 of the General Terms and Conditions as a breach of this License Agreement subject to Section 4 of this License Agreement and Section 17.0 of the General Terms and Conditions.

**7. No City Warranties and Assumption of Risk.** City expressly disclaims any warranty of fitness of the Premises and the Licensed Area for the use intended by Provider and expressly disclaims any warranty of merchantability. Provider consents to use of the Premises and the Licensed Area in an as-is, where-is condition, with all faults, and without any warranty whatsoever, express or implied. Provider acknowledges that Provider has inspected and is familiar with the Premises and the Licensed area as regards Provider's requirements for performing Provider's Energy Services obligations pursuant to the Agreement, and assumes all risk of loss or damage to property and personal injury arising from the use of the Premises and the Licensed Area by Provider and Provider's privities, except as otherwise expressly provided in the Agreement.

**8. Alteration of Premises.** Provider may not make any alterations, install any fixtures, or make any additions or improvements to the Premises or the Licensed Area except as required for installation or removal of the System in accordance with the Agreement without prior written consent of the Purchaser.

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**9. Government Regulations.** Provider shall comply with all statutes, ordinances and regulations of any federal, state, county and municipal authorities in effect or which hereafter may become effective, pertaining to Provider's use of the Premises and the Licensed Area.

**10. Statutory Notice of Possessory Interest Tax.** Provider is advised and acknowledges that under California Revenue and Taxation Code Section 107.6, execution of this License Agreement may create a possessory interest in Provider subject to property taxation. Provider hereby agrees that if such possessory interest is created and is subject to property taxation, Provider shall be solely responsible for the payment of said property taxes levied on any such interest.

**11. Indemnification.** Provider's indemnity of the Purchaser Indemnitees in Section 16.1 of the General Terms and Conditions shall apply to Liability arising out of or in connection with Provider's use of the Premises and/or the Licensed Area, and Provider's failure to comply with the terms of this License Agreement. Purchaser shall promptly provide Provider written notice in accordance with Section 16.0 of the General Terms and Conditions concerning Liability that may be subject to Provider's obligations under this section and Section 16.1 of the General Terms and Conditions.

**12. Insurance.** Grantee shall procure and maintain in effect for the duration of this License Agreement insurance in accordance with the insurance requirements specified in Exhibit B of the Agreement.

**13. Remedies and Enforcement.** In the event of a breach or threatened breach by a party of the provisions of this License Agreement, the other party shall be entitled to full and adequate relief by injunction and other available legal and equitable remedies subject to and in accordance with the terms of the Agreement.

**14. Successors and Assigns.** This License Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns in accordance with Section 21.9 of the General Terms and Conditions.

**15. Amendment.** This License Agreement may only be amended by a document executed by the authorized representatives of each party.

**16. No Waiver.** No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition of this License Agreement shall be construed as a waiver of or acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant or condition.

**17. Severability.** If any term or provision of this License Agreement shall, to any extent, be deemed invalid or unenforceable under applicable law, then the remaining terms and provisions

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of this License Agreement shall not be affected thereby, and each such remaining terms and provisions shall be valid and enforced to the extent permitted by law.

**18. Applicable Law.** This License Agreement shall be enforced and interpreted under the laws of the State of California and the City of Petaluma. Any action arising from or brought in connection with this License Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.

**19. No Partnership or Joint Venture.** Nothing in this License Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of the others.

**20. Section Headings.** The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

**21. Third Party Beneficiaries.** The parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party except as provided in Section 20.0 of the General Terms and Conditions.

**22. Entire Agreement.** This License Agreement sets forth the entire agreement between the parties regarding the subject matter hereof. There are no statements, promises, representations or understandings, oral or written, not herein expressed.

**23. Construction.** The parties agree that notwithstanding Civil Code Section 1654, any uncertainty in this License Agreement shall not be construed against the drafter of this License Agreement.

**24. Notice.** Any notice to be given hereunder shall be directed in accordance with Section 18.0 of the General Terms and Conditions.

**25. Recordation.** Provider or Purchaser may record this License Agreement in accordance with Section 10.0 of the General Terms and Conditions.

**26. Counterparts/Facsimile.** To facilitate execution, this License Agreement may be executed by facsimile or electronically and in as many counterparts as may be deemed appropriate by the parties, all of which when taken together shall be deemed an original and shall comprise one (1) agreement.

**[Signatures on next page]**

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to the General Terms and Conditions  
Exhibit C of the Energy Services Agreement  
between the City of Petaluma  
and Ellis Creek Solar LLC

**ELLIS CREEK SOLAR LLC**

Dated: \_\_\_\_\_

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

Approved as to form

Dated: \_\_\_\_\_

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

**CITY OF PETALUMA:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peggy Flynn, City Manager

Attest:

\_\_\_\_\_  
Kendall Sawyer, City Clerk

Approved as to form:

\_\_\_\_\_  
Eric W. Danly, City Attorney

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ParcelQuest

68-01  
3-052 136-001  
136-013 136-017

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA  
3-052 136-001  
136-013 136-017

68-01

Assessor's Map Bk. 068, Pg. 01  
Sonoma County, Calif. (340)

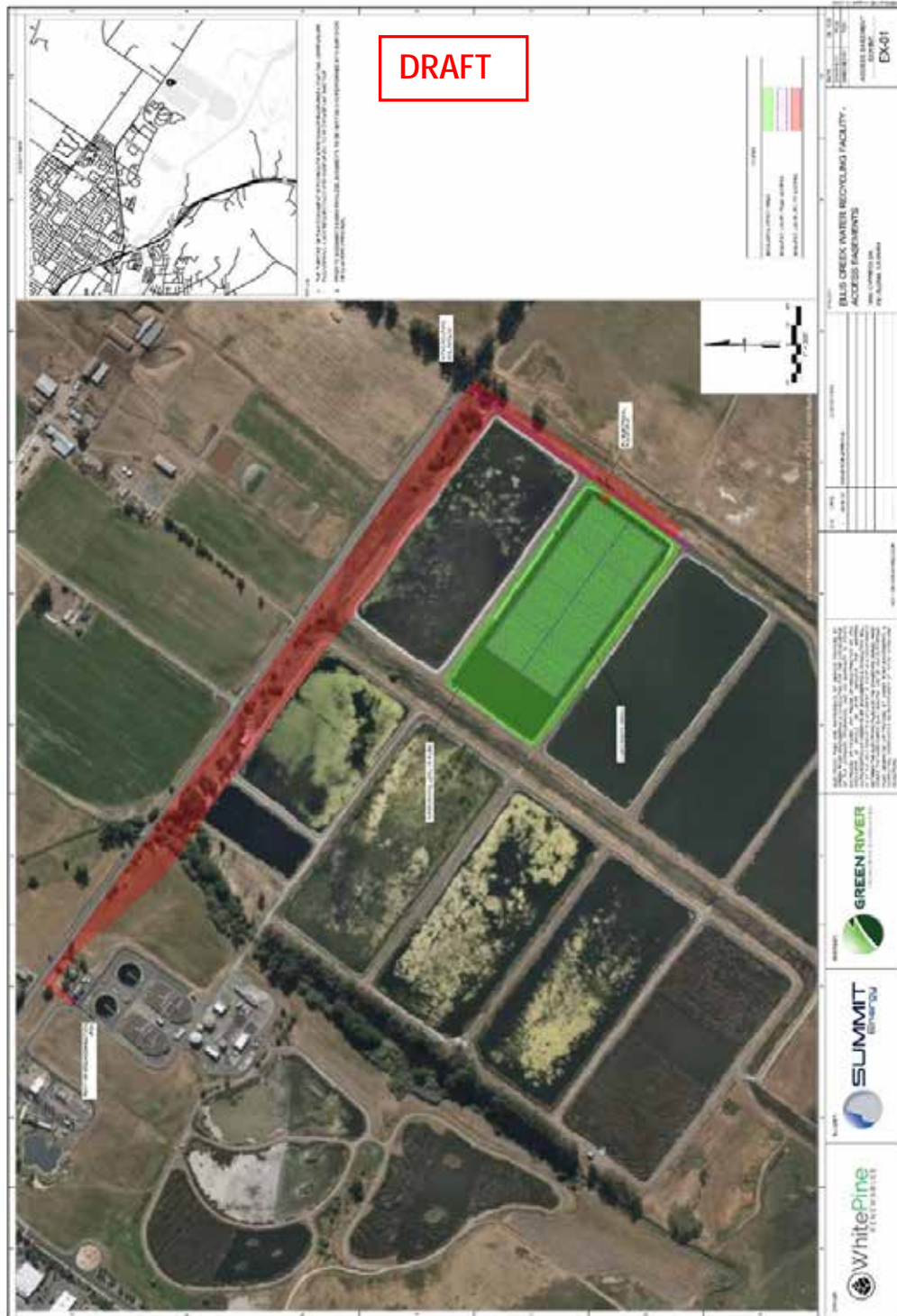
NOTE: This map was prepared for Assessment purposes only and does not constitute a warranty of accuracy. The Assessor's Office is not responsible for any errors or omissions on this map. The Assessor's Office is not responsible for any errors or omissions on this map. The Assessor's Office is not responsible for any errors or omissions on this map.

NOTE: Assessor's parcels do not necessarily coincide with legal parcels. To verify legal parcel status, consult with the appropriate city or county planning department or planning services.

7



**Exhibit B**  
**Licensed Area**



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**Exhibit C**  
**Licensed Use**

1. Access to the Facilities at 3890 Cypress Drive shall be through the main gate. Provider, the EPC Contractor and subcontractors to check in at the front office. Provider shall notify Purchaser staff 72 hours in advance of access to site. Notification of less than 72 hours may be accommodated at the discretion of Purchaser staff. Notification will be by telephone to 707-776-3777.
  - a. Construction Phase: The EPC Contractor shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 5:00 p.m. (“Installation Hours of Operation”). The Provider and the EPC Contractor will not be required to provide advance notice for access and performance of the Installation Work during the Installation Hours of Operation. Advance notice to and approval of the Purchaser is required prior to the performance of Installation Work outside the Installation Hours of Operation.
2. Access to the pond site Facilities at 4400 Lakeville Highway shall be through the gate located at 4400 Lakeville Highway. Upon execution of the Agreement, Provider will be provided with access code to the gate. Prior to commencement of the Installation Work, Provider shall notify Purchaser staff 72 hours in advance of required access to the Premises. Notification of less than 72 hours may be accommodated at the discretion of Purchaser staff. Notification will be by telephone to 707-776-3777.
  - a. Construction Phase: the EPC Contractor shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 5:00 p.m. Provider shall be responsible for providing the EPC Contractor and others engaged in the performance of the Installation Work the gate access code for 4400 Lakeville Highway, and for ensuring compliance of Provider’s contractors with this License Agreement for the duration of the Installation Work. Provider and EPC Contractor will not be required to provide advance notice for access during construction unless work will occur outside the hours stated herein.
  - b. Operation and Maintenance Phase: Provider shall notify Purchaser staff 72 hours in advance of access to the Premises. Notification of less than 72 hours may be accommodated at the discretion of Purchaser staff. However, Purchaser understands that certain events may require less than 72 hours’ notice to Purchaser and Purchaser agrees to work in good faith with Provider to provide timely access to the Premises as required for fulfillment of Provider’s Energy Services obligations.

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- c. Purchaser staff may occasionally change gate access code for security purposes. In the event of a change in gate access code, Purchaser shall notify Provider of the new code as appropriate.
- 3. Access to Electrical Services. Provider has the right to access electrical panels and conduits to connect to and disconnect the System from the Premises' electrical facilities, and use of the Premises' electrical wiring and facilities to transmit electricity generated by the System to the Local Electric Utility.

**Attachment B**

*Certain Agreements for the Benefit of Financing Parties*

## **Attachment B**

### **Certain Agreements for the Benefit of Financing Parties**

Purchaser acknowledges that Provider will be receiving financing accommodations from one or more Financing Parties concerning Provider's performance of the Energy Services, and that Provider may sell or assign the System or Provider's interest in the Agreement and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of the Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, and subject to and without modifying the Energy Services required to be performed pursuant to the Agreement, Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Provider to a Financing Party, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery to Provider, a copy of each notice of default regarding Provider's obligations under the Agreement given by Purchaser under this Agreement, including a reasonable description of Provider default, and the required cure. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to cancel, modify or terminate this Agreement without the written consent of the Financing Party; however, this provision shall not be interpreted to limit any termination rights of either Party as set forth in the Agreement.

(c) **Financing Party Rights Upon Event of Default.** Notwithstanding any contrary term of the Agreement:

i. In the event of Provider's or Purchaser's default, the Financing Party shall be entitled to exercise, in the place and instead of Provider, any and all rights and remedies of Provider under the Agreement and to exercise all rights and remedies of secured parties generally with respect to the Agreement and the System in accordance with the terms of the Agreement.

ii. Financing Party shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreement. Nothing in the Agreement requires the Financing Party to cure any default of Provider under the Agreement or (unless the Financing Party has succeeded to Provider's interests under the Agreement) to perform any act, duty or obligation of Provider under the Agreement, but Purchaser acknowledges that the Financing Party shall have the option to do so.

iii. Upon the exercise of remedies regarding the Financing Party's security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance of the Provider's interest in the System or the Agreement from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the

Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement in accordance with Section 18 of Exhibit C of the General Terms and Conditions. Any such exercise of remedies shall not constitute a default under the Agreement.

iv. Upon any Provider default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Purchaser shall enter into a successor agreement with the Financing Party or its designee having the same terms and conditions as the Agreement.

(d) Financing Party Right to Cure.

i. Purchaser shall not exercise any right to terminate or suspend the Agreement unless it shall have given the Financing Party prior written notice by giving notice to the Financing Party (at the address provided by Provider) in accordance with Section 18 of the General Term and Conditions of Purchaser's intent to terminate or suspend the Agreement, specifying the condition giving rise to such right. The Financing Party shall have thirty (30) days from Purchaser's notice or any longer period provided for in the Agreement to cause to be cured the condition giving rise to the Purchaser's right of termination or suspension; provided, if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The cure rights described herein are in addition to and apply and commence following the expiration of any notice and cure period applicable to Provider. The Parties' respective obligations will otherwise remain in effect during any cure period.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods specified in paragraph (d)(i) above, cure all defaults under the Agreement existing as of the date of such change in title or control in the manner required by the Agreement and which are capable of cure by a third person or entity, then such defaults shall no longer exist under the Agreement, and the Agreement shall continue in full force and effect.

(e) Release and Waiver; Financing Agreement Defaults.

Until such time as all of Provider's obligations to any Financing Party under an agreement between Provider and a Financing Party (a "Financing Agreement") (excluding contingent indemnification and reimbursement obligations that, by their express terms, survive the repayment of the loans, interest, fees and other amounts owed under said Financing Agreement) have been paid in full, Purchaser hereby waives, releases and relinquishes to such Financing Party all right, title, interest, claim and lien which Purchaser has or may in the future have, under any and all applicable laws, including statutory rights, in, to or against the System, and the System shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by Purchaser. If an event of default by Provider occurs and is continuing under a Financing Agreement, Purchaser agrees that the affected Financing Party has the right to (i) take possession

of and succeed to all of Provider's right, title and interest under this Agreement, including the right to operate the System, and/or (iii) by mutual agreement with the Purchaser, prepare the System for sale and/or conduct a sale or liquidation of the System on the Premises and/or store the System on the Premises for a reasonable period in connection therewith by such date as mutually agreed by the parties. Unless the Financing Party and the Purchaser otherwise agree, the Financing Party shall not be liable for rental storage charges under the Agreement or otherwise; provided, however, that such Financing Party agrees to remove the System pursuant to Section 2.2 of Exhibit C of the General Terms and Conditions. For the avoidance of doubt, the Financing Party would not be required to replace or reconstruct any improvements removed or demolished by the Provider or Purchaser during construction or maintenance of the System in accordance with the terms of the Agreement. If a Financing Party fails to remove or commence substantial efforts to remove the System by the date on which the Financing Party and Purchaser have agreed, Purchaser may, at its option, remove or have removed the System to a public warehouse and restore the Premises to its original condition (including all System mounting pads or other support structures) all at such Financing Party's reasonable cost. Nothing herein or elsewhere shall be deemed to prevent or limit a Financing Party, at its option, from abandoning any part of the System. Purchaser agrees that any action taken by a Financing Party to exercise its remedies under a Financing Agreement shall not constitute a default or event of default under the Agreement, and the Agreement shall continue in full force and effect following the exercise of such remedies. Any assignment of the membership interests in the Provider shall constitute a permitted assignment under the Agreement and the Agreement shall continue in full force and effect following such assignment, without the requirement of any further documentation regarding such assignment between Provider and Purchaser.

(f) Consent and Agreement. Upon Provider's request, Purchaser agrees to execute a consent to collateral assignment of the Agreement in favor of the Financing Party containing customary provisions reasonably requested by lenders and other financing parties for financing of solar facilities like the System (a "Consent and Agreement") so long as the Energy Services to be provided under the Agreement and Purchaser's rights under the Agreement are not materially changed as a result. If there is any conflict between this Attachment B and the terms of any Consent and Agreement, the terms of such Consent and Agreement shall prevail.

## **Attachment C**

*Requirements Applicable to the Installation Work*



## Attachment C

### Requirements Applicable to the Installation Work

- C.1 Prohibition Against Use of Tobacco. All properties and facilities owned, leased or operated by the Purchaser are tobacco-free work places. No person on, at or in any Purchaser-controlled property or facility, including, without limitation, the Premises, may smoke, chew or otherwise use tobacco products. Provider shall be responsible for: (i) informing any and all persons present on or at the Premises on account of the Installation Work about the Purchaser's tobacco-free policy; and (ii) strictly enforcing such policy with respect to the Premises. The Purchaser, Provider, EPC Contractor and each subcontractor shall require that any person present on or at the Premises on account of the Installation Work who violates such policy must permanently leave the Premises, and shall prohibit such person from thereafter being present or performing any of the Installation Work on or at the Premises.
- C.2 Prohibition Against Use of Drugs.
- (a) Purchaser Drug-Free Policy. All properties and facilities owned, leased or operated by the Purchaser are drug-free work places. No person on, at or in any Purchaser-controlled property or facility, including, without limitation, the Premises, may: (i) engage in the unlawful manufacture, dispensation, possession or use, including being under the influence, of any controlled substance, (ii) possess or use any alcoholic beverage, or (iii) use any substance which may cause significant impairment of normal abilities. Provider shall be responsible for: (i) informing any and all persons present on or at the Premises on account of the Installation Work about the Purchaser's drug-free policy; and (ii) strictly enforcing such policy with respect to the Premises. The Purchaser, Provider, EPC Contractor, and each subcontractor shall require that any person present on or at the Premises on account of the Installation Work who violates such policy must permanently leave the Premises, and shall prohibit such person from thereafter being present or performing any of the Installation Work on or at the Premises.
- (b) Drug-Free Workplace Certification. Provider is hereby made subject to the requirements of Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990.
- C.3 Compliance with Labor Requirements. The Installation Work is a "public works" project as defined in Section 1720 of the California Labor Code ("Labor Code") and made applicable pursuant to Section 1720.6 of the Labor Code. Therefore, the Installation Work is subject to applicable provisions of Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, Section 16000 et seq. (collectively, "Labor Law"). Provider acknowledges that, as provided by Senate Bill 854 (Stats. 2014, Ch. 28), the Project is subject to labor compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR").
- C.4 City of Petaluma Living Wage Ordinance. EPC Contractor and each subcontractor shall comply fully with all applicable requirements of the City Municipal code, Chapter 8.36, Living Wage (the "Living Wage Ordinance"), as the same may be amended from time to time. Upon Purchaser's request Provider shall promptly provide to Purchaser documents and information verifying Provider's compliance with the requirements of the Living Wage

Ordinance, and shall within fifteen (15) calendar days of the Effective Date of this Agreement, notify each of its affected employees as to the amount of wages and time off that are required to be provided to them pursuant to the Living Wage Ordinance. The Acknowledgement and Certification Pursuant to City of Petaluma Living Wage Ordinance, Attachment D, shall be a part of this Agreement for all purposes, and Contractors that are subject to Living Wage Ordinance requirements, as determined by Purchaser, must provide a properly completed Attachment D in accordance with the requirements of the Living Wage Ordinance. Provider's noncompliance with the applicable requirements of the Living Wage Ordinance shall constitute cause for Purchaser's termination of this Agreement subject to Exhibit C General Terms and Conditions, Section 2.

- C.5 Compliance with Labor Code Requirements. Provider must be, and shall be deemed and construed to be, aware of and understand the requirements of the Labor Law that require the payment of prevailing wage rates and the performance of other requirements on public works projects. Provider, at no additional cost to the Purchaser, must: (i) comply with any and all applicable Labor Law requirements, including, without limitation, requirements for payment of prevailing wage rates, inspection and submittal (electronically, as required) of payroll records, interview(s) of workers, et cetera; (ii) ensure that its EPC Contractor and each subcontractor are aware of and comply with the Labor Law requirements; (iii) in connection with Labor Law compliance matters, cooperate with the DIR, the Purchaser and other entities with competent jurisdiction; and (iv) post all job-site notices required by law in connection with the Installation Work, including, without limitation, postings required by DIR regulations. A subcontractor that has been debarred in accordance with the Labor Code, including, without limitation, pursuant to Sections 1777.1 or 1777.7, is not eligible to bid on, perform, or contract to perform any portion of the Installation Work. Wage rates for the Installation Work shall be in accordance with the general prevailing rates of per-diem wages determined by the Director of Industrial Relations pursuant to Labor Code Section 1770. The following Labor Code sections are by this reference incorporated into and are a fully operative part of the Agreement, and Provider shall be responsible for compliance therewith:
- (a) Section 1735: Anti-Discrimination Requirements;
  - (b) Section 1775: Penalty for Prevailing Wage Rate Violations;
  - (c) Section 1776: Payroll Records;
  - (d) Sections 1777.5, 1777.6 and 1777.7: Apprenticeship Requirements;
  - (e) Sections 1810 through 1812: Working Hour Restrictions;
  - (f) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and
  - (g) Section 1815: Overtime Pay.
- C.6 Requirements for Payroll Records. Provider must comply with all applicable provisions of Labor Code Sections 1776 and 1812, which relate to preparing and maintaining accurate payroll records, and making such payroll records available for review and copying by the Purchaser, the DIR Division of Labor Standards Enforcement, and the DIR Division of Apprenticeship Standards. The payroll records must be certified and made available as required by Labor Code Section 1776.
- C.7 Contractor Registration. On and after March 1, 2015, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. On and after

April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5, if the contractor is registered at the time the contract is awarded.

- C.8 Licenses. Without limiting anything set forth in Section C.7, Provider, its EPC Contractor, subcontractors, and all of their respective employees and agents: (i) shall secure and maintain in force at all times during the performance of the Installation Work such licenses as are required by law; and (ii) shall comply with all federal and State, and County laws and regulations, and other governmental requirements applicable to the System or the Installation Work. Provider or its subcontractors shall obtain and pay for all licenses, including a City Business License, required for the performance of, or necessary in connection with, the Installation Work, and shall give all necessary notices and deliver all necessary certificates to the Purchaser, and shall pay all royalties and license fees arising from the use of any material, machine, method or process used in performing the Installation Work. Provider shall be solely responsible for all charges, assessments and fees payable in connection with any such licenses, permits, materials, machines, methods, and processes.
- C.9 Public Works Compliance. The Provider shall ensure EPC Contractor complies with all applicable California public works and project requirements.

**Attachment D**

*Living Wage Ordinance Certification*

## **ATTACHMENT D**

### **ACKNOWLEDGEMENT AND CERTIFICATION PURSUANT TO CITY OF PETALUMA LIVING WAGE ORDINANCE PETALUMA MUNICIPAL CODE CHAPTER 8.36**

The City of Petaluma Living Wage Ordinance (“Ordinance”), Petaluma Municipal Code Chapter 8.36, applies to certain service contracts, leases, franchises and other agreements or funding mechanisms providing financial assistance (referred to hereafter as an “Agreement”) between the City of Petaluma (“City”) and/or the Petaluma Community Development Commission (“PCDC”) and contractors, lessees, franchisees, and/or recipients of City and/or PCDC funding or financial benefits (“covered entities”).

Pursuant to Petaluma Municipal Code Section 8.36.120, as part of any bid, application or proposal for any Agreement subject to the Ordinance, the covered entity shall:

- Acknowledge that the covered entity is aware of the Ordinance and intends to comply with its provisions.
- Complete the Report of Charges, Complaints, Citations and/or Findings contained in this Acknowledgement and Certification by providing information, including the date, subject matter and manner of resolution, if any, of all wage, hour, collective bargaining, workplace safety, environmental or consumer protection charges, complaints, citations, and/or findings of violation of law or regulation by any regulatory agency or court including but not limited to the California Department of Fair Employment and Housing, Division of Occupational Safety and Health (OSHA), California Department of Industrial Relations (Labor Commissioner), Environmental Protection Agency and/or National Labor Relations Board, which have been filed or presented to the covered entity within the ten years immediately prior to the bid, proposal, submission or request.

Pursuant to Petaluma Municipal Code Section 8.36.120, before the beginning of the term of any covered Agreement, or prior to the execution of said Agreement by the City or the PCDC, each covered entity shall certify that its employees are paid a living wage that is consistent with Petaluma Municipal Code Chapter 8.36.

By executing this Acknowledgement and Certification, the covered entity (i) acknowledges that it is aware of the Ordinance and intends to comply with its provisions, (ii) attests to the accuracy and completeness of information provided in the Report of Charges, Complaints, Citations and/or Findings contained herein, (iii) certifies that it pays its covered employees a Living Wage as defined in Petaluma Municipal Code Chapter 8.36 and (iv) attests that the person executing this Acknowledgement and Certification is authorized to bind the covered entity as to the matters covered in this Acknowledgment and Certification.

SO ACKNOWLEDGED and CERTIFIED:

Project or Contract I.D: \_\_\_\_\_

\_\_\_\_\_  
(Print Name of Covered Entity/Business Capacity)      Date: \_\_\_\_\_

By \_\_\_\_\_  
(Print Name)

/s/ \_\_\_\_\_  
(Signature)

Its \_\_\_\_\_  
(Title /Capacity of Authorized Signer)

**REPORT OF CHARGES, COMPLAINTS, CITATIONS AND/OR FINDINGS  
PURSUANT TO PETALUMA MUNICIPAL CODE SECTION 8.36.120**

FOR EACH WAGE, HOUR, COLLECTIVE BARGAINING, WORKPLACE SAFETY, ENVIRONMENTAL OR CONSUMER PROTECTION CHARGE, COMPLAINT, CITATION, AND/OR FINDING OF VIOLATION OF LAW OR REGULATION BY ANY REGULATORY AGENCY OR COURT, INCLUDING BUT NOT LIMITED TO THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (OSHA), CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (LABOR COMMISSIONER), ENVIRONMENTAL PROTECTION AGENCY AND/OR NATIONAL LABOR RELATIONS BOARD, WHICH:

- AFFECTS YOU AS A PROSPECTIVE CONTRACTOR, SUBCONTRACTOR, LESSEE, FRANCHISEE AND/OR PARTY TO ANY CITY OF PETALUMA AND/OR PETALUMA COMMUNITY DEVELOPMENT COMMISSION-FUNDED AGREEMENT OR BENEFIT SUBJECT TO PETALUMA MUNICIPAL CODE CHAPTER 8.36 (LIVING WAGE ORDINANCE), AND
- HAS BEEN FILED OR PRESENTED TO YOU WITHIN THE TEN YEARS IMMEDIATELY PRIOR TO THE BID, PROPOSAL, SUBMISSION OR REQUEST FOR WHICH THIS ACKNOWLEDGEMENT AND CERTIFICATION IS MADE.

PLEASE PROVIDE THE DATE, THE REGULATORY AGENCY OR COURT MAKING THE CHARGE COMPLAINT, CITATION OR FINDING, THE SUBJECT MATTER AND THE MANNER OF RESOLUTION, IF ANY, FOR EACH SUCH CHARGE COMPLAINT, CITATION OR FINDING.

IF NONE, PLEASE STATE "NONE": \_\_\_\_\_

ATTACH ADDITIONAL PAGES IF NEEDED.

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

Regulatory Agency or Court: \_\_\_\_\_

Subject Matter: \_\_\_\_\_

\_\_\_\_\_

Resolution, if any: \_\_\_\_\_

\_\_\_\_\_

Expected resolution, if known: \_\_\_\_\_

\_\_\_\_\_

## **Exhibit D – Technical Specifications**



## **EXHIBIT D –TECHNICAL SPECIFICATIONS**

This Exhibit incorporates the following technical specifications:

- D.1 Scope of Work
- D.2 Supplementary Criteria
- D.3 Review Process, Submittals, Commissioning and Closeout

Where these specifications and the Agreement or other incorporated documents are in conflict, the more stringent shall apply, except as provided in Section 2 of the Agreement “Incorporation of Exhibits, Integration and Precedence.” Provider shall identify conflicts and confirm recommended changes or procedures with Purchaser.

Terms applicable to all Technical Specifications.

- A. Project Location:
  - 1. Ellis Creek Water Recycling Facility – 3890 Cypress Drive and 4400 Lakeville Highway, Petaluma, CA 94954
- B. Definitions: In this Exhibit the following definitions shall be used:
  - 1. “Purchaser” shall mean the Purchaser of energy under the Agreement, including any representative of the Purchaser, such as independent engineers, consultants or inspectors.
  - 2. "Provider" shall be the Provider of energy as defined in the Agreement, including Engineer(s) of Record or other design professionals.
  - 3. "Agreement" refers to the Energy Services Agreement – Ellis Creek Floating Solar Facilities and any incorporated documents.
  - 4. “Engineering Procurement Construction Contractor” or "EPC Contractor" as defined in the Agreement, refers to the entity(ies) responsible for performing the Engineering, Procurement, and Construction Contract on behalf of the Provider, including engineers, consultants, contractors and sub-contractors engaged under contract by the Provider.
  - 5. “Commercial Operation Date” (COD) is as defined in the Agreement.

## EXHIBIT D.1 – SCOPE OF WORK

This specification applies to the Energy Services Agreement (Agreement) and includes the scope for design, construction, commissioning and operation of a complete energy system as described here and elsewhere in the Agreement.

### 1.01 DESIGN PHASE SCOPE

Refer to Exhibit D.3 for additional requirements for the Design Review Process and Submittals.

#### A. Design Team

1. Provider shall provide Electrical, Structural and all other required licensed engineers to complete the work. All designers shall be licensed in the state where the System is located. Designers shall provide all progress designs and a complete stamped design set as required to permit and construct a complete energy project.
2. Provider shall fully coordinate all engineering disciplines and designers involved in completing the Work.

#### B. Provider shall produce progress designs for Purchaser review. Drawings and design sets produced for Purchaser shall include Schematic Design (30%), Design Development (60%), Issued for Permit Documents (90%).

#### C. Project meetings shall be held weekly by Provider and Purchaser during design phase.

#### D. The design shall incorporate all energy systems described in the Agreement, including, but not limited to:

1. Solar Photovoltaic (PV) System(s)
2. All ancillary equipment, infrastructure and site improvements to implement these systems
3. Metering and monitoring systems

#### E. DUE DILIGENCE. Provider shall identify and perform all necessary due diligence to design and implement the Project. Due diligence shall include, but not be limited to: geotechnical investigations, structural investigations, surveying, underground utility location (including Ground-Penetrating Radar (GPR), potholing/hand-digging to verify critical UG constraints, utility coordination, title reports, American Land Title Association (ALTA) surveys, geohazard review, bathymetric survey, electrical equipment inspection and testing, identification of Authorities Having Jurisdiction (AHJs), and identification and documentation of Purchaser's Project Requirements. Refer to Section 2.08 of Exhibit D.2 for additional requirements regarding underground utilities.

#### F. SCHEMATIC DESIGN (SD)

1. Provider shall produce SD plans that accurately describe, at a schematic level, all energy systems proposed for the project, their siting and size on the site, and the physical and electrical configuration of the systems sufficient for presentation and discussion with the Provider. Work shall include design calculations, engineering,

modeling and drawings of energy systems to meet the operational and functional requirements of the Agreement. SD Documents shall be sufficient to present the complete concept of the Project, including all major elements of the system(s), machinery, equipment, structure(s), and site design(s).

2. Provider shall size Solar PV, and any other energy systems subject to production targets, to meet the target production. Sizing shall include accurate and detailed modeling of production for each system and site based on site using industry standard modeling tools.

#### G. DESIGN DEVELOPMENT

1. Provider shall provide plans sufficient to fix and illustrate project's scope and character in all essential design elements including, without limitation, site plans; demolition plans; civil, structural, mechanical, and electrical plans; elevations; cross sections and other mutually agreed upon plans deemed necessary to describe the developed design; single line electrical and mechanical plans; and structural plans with schematic sizing of major structural elements.
2. Provider shall provide recommendations for scheduling and phasing of construction.
3. Provider shall provide updated energy system performance modeling and operational/functional descriptions for the energy systems included in the Project.
4. Provider shall identify and plan for any changes to Purchaser property required for the Project, including, but not limited to: grading, tree or vegetation removal.
5. Provider shall design a site communication plan that brings inverter, environmental, and meter data onto a single network accessible from the electrical room.

#### H. ISSUED FOR PERMIT DOCUMENTS (IFPs)

1. Provider shall provide to Purchaser IFPs that fully describe in-detail all aspects of the Project and Work to be performed. IFPs shall include drawings, specifications, calculations, control plans, etc. as-needed for construction and AHJ approval.
2. IFPs shall be prepared in compliance with all relevant codes, standards, regulations, AHJ Requirements, and Agreement requirements. IFPs must meet the approval of the Provider and the Authority(ies) Having Jurisdiction (AHJs) over the project, including the Local Fire Authority.
3. IFPs shall include, but not be limited to: grading, landscape modifications, demolition plan, excavations, directional boring/trenching, racking and mounting systems, pads, other structural elements, electrical systems, electrical system upgrades, signage, foundations, fencing, fire and safety, lighting, conduits/spare conduits (including above and below grade), vault locations, equipment mounting details, wall mount conduit routing, accessibility improvements, etc. as required or implied by this specification, the Agreement Documents, AHJs and applicable codes, standards, and regulations.

4. Following receipt of Purchaser's comments, Provider shall complete final IFPs. Such complete IFPs may then, with Provider's approval, be submitted by Provider to the AHJ(s). Provider shall produce and provide to Purchaser a final Issued for Construction (IFC) design set upon securing permit(s), incorporating final AHJ comments.
5. Warranty. Provider shall warrant to Purchaser the final design, as expressed in the Construction Documents:
  - a. Will be constructible, workable, and buildable within Provider's detailed Project schedule;
  - b. Will comply in all respects with the requirements of the Agreement;
  - c. Will not call for the use of hazardous or banned materials; and
  - d. Will fully comply with applicable building codes, ordinances, standards, governmental regulations, and private restrictions applicable to the Work.
  - e. Meets all utility interconnect requirements for a net-metered energy system.

I. PERMITS

1. Provider is responsible for identifying, obtaining, implementing and adhering to all permit requirements. Permitting shall include all required coordination and submittals with the local Authority(s) Having Jurisdiction (AHJs), including the local electric utility the project is interconnected with. Provider shall take all steps to secure AHJ approvals and all other required reviews and approvals of the Issued for Permits (IFP) design set.
2. Provider shall be responsible for permit closeout and certification of all project-related permit applications. All permit related costs shall be the responsibility of the Provider.
3. Where a permit process was begun prior to the Agreement (e.g., Interconnect Applications with the utility), Provider shall take over the permitting process from the Purchaser upon Agreement execution.
4. Provider shall pay all permitting fees required for the project, inclusive of utility interconnect costs, except where expressly identified as a Purchaser-cost in the Agreement.
5. The Purchaser will act as the lead agency for CEQA. Provider is responsible for supporting the Purchaser with CEQA documentation, preparing the CEQA documentation, if necessary, and implementing any mitigation requirements. The responsibility for the cost of CEQA mitigation shall be per the Agreement.
6. Provider shall prepare Storm Water Pollution Prevention (SWPPP) as applicable based on disturbance. Provider and EPC Contractor shall ensure implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site as required by the AHJs.

## J. INCENTIVES/RENEWABLE ENERGY CREDITS

1. Where incentives are available for energy systems that are a part of the scope of work, Provider shall be responsible for all requirements to ensure full incentives are received for the Project, including but not limited to: incentive management, design and construction of the Project to meet incentive requirements, documentation, coordination with the entity providing incentives, proper closeout of Project/incentive documentation, reporting and performance requirements during operation, etc.
2. Provider shall provide a Data Acquisition System (DAS) capable of outputting data in the Western Renewable Energy Generation Information System (WREGIS) format sufficient for registering Renewable Energy Credits (RECs) for the system. Further, Provider shall cause the system and generation to be registered and reported to WREGIS by a Qualified Reporting Entity (QRE) and assist the purchaser with taking ownership of the RECs.

- K. COMMUNITY OUTREACH. Provider shall support Purchaser with community outreach. This may include preparing materials for, and attending community meetings, and assisting Purchaser with responding to stakeholder inquiries and comments.

1.02 CONSTRUCTION PHASE

- A. Provider shall provide complete Construction Phase oversight, inclusive of onsite construction management and management of all sub-contractors. Refer to Exhibit D.3 for additional details.
- B. Solar Photovoltaic Systems (Solar PV).

Provider shall provide and install all equipment necessary for a complete, interconnected and operational PV system, with components including, but not limited to:

1. Solar PV modules
2. Inverters
3. Transformers
4. Combiner boxes and disconnects
5. Fuses
6. Circuit breakers
7. All electrical switch gear or substations, including any modification necessary to existing gear, required for a utility grid-connected PV system
8. All electrical conductors, conduits and components necessary for a complete PV system
9. Purchaser side medium voltage connection work shall consist of:

- a. Tie into and re-configure existing medium voltage switchgear (MSWGR) as required.
  - b. Provide and install 1200AF/200AT 15kV circuit breaker in existing MSWGR section.
  - c. Provide and install SEL-751 relay, relay enclosure, Current Transducers, Potential Transformers, etc.
  - d. Provide and install S&C PV System Utility Disconnect, 14.4kV, 600A.
  - e. Provide and install PV Disconnect equipment pad and related grounding.
  - f. Provide and install Medium Voltage cable from PV Disconnect to existing switchgear MSWGR.
  - g. Provide underground directional boregrod conduit from PV Disconnect to existing underground vault. Utilize existing underground conduit for continuance from underground vault to MSWGR.
10. All mounting systems, including float system, anchorage, and tethering.
  11. All metering, monitoring and communications equipment, software and subscriptions required by the Contract and the utility and to secure WREGIS RECs.
  12. All grounding and arc-fault protection.
  13. Any balance of system items for a complete, interconnected, grid-tied and operational solar PV system
  14. Permanent or removable bollards around all equipment vulnerable to vehicle strikes.
  15. All lighting, security or other ancillary equipment described in the Agreement.
- C. Any changes to Purchaser property required for the Project to facilitate construction, including, but not limited to: grading, tree or vegetation removal, repair of damage caused by Contractor, are the sole responsibility of the Provider unless mutually agreed to by Purchaser and Provider.
- D. Provider shall coordinate with, and provide support to, the Purchaser, all Inspectors, and Purchaser's Representatives during all phases of work.
- E. UTILITY COORDINATION AND INTERCONNECTION
1. Provider shall prepare interconnection applications and manage the interconnection process, including tariff change requests, processing costs, coordination with the local utility(ies), shutdowns, inspections, testing, etc. necessary to achieve interconnection and permission to operate for all energy systems.
- F. MISCELLANEOUS. Provider shall ensure that EPC Contractor provides during construction:
1. Legal toilet and hand wash sink facilities at job Site.
  2. Daily cleanup to "broom clean" conditions.

3. Implementation and management of all Stormwater Pollution Protection Plan (SWPPP) and other permit required measures for construction.
4. Return of disturbed areas to pre-construction conditions.
5. Installation of Purchaser-approved project information signage and removal at completion of project.

### 1.03 OPERATIONAL PHASE

- A. Provider shall provide the following minimum Operational Phase scope:
  1. Comprehensive operations and maintenance for the entire term of the Agreement, including all necessary maintenance to maintain system performance and performance guarantee.
  2. Monthly billing to the Purchaser with kWh of production, cost per kWh for the period and total cost, subject to the requirements of Exhibit C, General Terms and Conditions, Section 6.2. Invoices shall be in accordance with the invoice format in Exhibit G and include Performance Test calculations pursuant to Exhibit F as an attachment. Invoices shall also include the status of System construction punch-list items in accordance with Section 3.4(e) of the General Terms and Conditions Exhibit C, until such items have been completed.
  3. Daily system monitoring and response to alarms as needed to keep the systems operational, operating safely, and performing optimally.
  4. Annual on-site system inspection, including system testing and routine preventive maintenance, repair and/or replacement of defective parts (equipment and labor) as needed.
  5. Routine preventative and unexpected maintenance to keep the systems in good working order and to meet performance guarantees, including PV module washing as specified in the Agreement Section 16.
  6. Maintenance of all ancillary equipment installed as part of the System in working order and good aesthetic condition, including maintaining float system, fencing, overhead or underground cabling, etc. as applicable.
  7. Maintenance of all meters required by this project, including maintaining the Western Renewable Energy Generation Information System (WREGIS) compliant meters in working condition and calibration of meters as required by the meter manufacturer. Verify that monthly total inverter measured production is within 8% of meter measured production. If not, investigate meter for accuracy and recalibrate or repair as needed.
  8. All costs associated with fees for monitoring, including providing web-based access to monitoring data and maintaining monitoring equipment. Detailed monitoring data (minimum 15-minute timestep) shall be available via internet at all times from COD to present.

9. All warranty and work required of the installation Contractor by utility interconnection rules.



## EXHIBIT D.2 SUPPLEMENTARY CRITERIA

### PART 1 - GENERAL

#### 1.01 SUMMARY

- A. This specification applies to the design, construction and commissioning of a complete energy system as described here and elsewhere in the Agreement.
- B. Provider shall perform all work and provide submittals consistent with this specification, other specifications, and the Agreement and Technical Specifications for all stages of work.

### PART 2 - SUPPLEMENTARY CONDITIONS

#### 2.01 APPLICABLE CODES AND STANDARDS

- A. Provider shall be responsible for compliance with all applicable laws, codes, regulations, industry best practices, etc. applicable to any and all design, construction, operations, sales of electrical energy, or other work related to delivering a complete energy project as described by the Agreement and documents incorporated thereto.
- B. The Provider shall comply with all requirements that apply to the energy systems for the Project. Provider shall be responsible to ensure compliance with all codes, regulations, Authority Having Jurisdiction (AHJ) requirements, etc. that apply to the Project.
- C. Provider shall be solely responsible for any and all tax law compliance, including, without limitation, compliance with the requirements related to any use of the Investment Tax Credit.
- D. Provider shall ensure that all work on utility interconnection conforms to the PG&E Greenbook and PG&E Distribution Interconnection Handbook.
- E. Provider shall ensure that no hazardous materials are used on the Project. If hazardous materials are proposed, Provider shall clearly identify any hazardous materials that are included in the Project and seek Purchaser's approval to use such materials during design. Provider shall ensure that the environmental impact of the hazardous material usage is disclosed, including any special maintenance requirements and proper disposal/recycling of the equipment at the end of its useful life. Equipment containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs related to equipment containing hazardous materials shall be clearly identified.
- F. Provider shall ensure wind uplift requirements per ASCE 7 are met per design wind speed requirements established by the local AHJ for the Project site(s).

#### 2.02 CONTRACTOR REQUIREMENTS

- A. Contractor License. The EPC Contractor and subcontractors providing any work on the Project shall be properly licensed pursuant to the Business and Professions Code and

shall be licensed in the appropriate classification(s) of Contractor's license(s), for the Project, and must maintain the license(s) throughout the duration of the Project.

- B. EPC Contractor staff and subcontractors are to wear identifying clothing, which includes at-minimum the name or logo of the EPC Contractor, at all times when on-site. The identification shall be distinguishable in all types of weather.

### 2.03 COMMUNICATIONS REGARDING THE WORK

- A. The Provider shall designate an authorized site representative and before starting work shall submit in writing to the Purchaser the authorized site representative's name and contact information. Said authorized representative shall be present at the site of work at all times while work is in progress on the Project. Any change in the designated representative shall be made to the Purchaser within twenty-four (24) hours of the change. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Purchaser shall be made.

### 2.04 PURCHASER REVIEW TIME

- A. Provider shall allow the following review time periods:

1. Design Review	Fourteen (14) calendar days, for each phase of design
2. Requests for Information (RFIs)	Seven (7) calendar days unless stated otherwise in the Agreement.
3. Submittals	Twenty-one (21) calendar days unless stated otherwise in the Agreement. Resubmittals shall be allowed the same for review as the time permitted for the initial submittal.
4. Substitution Requests	Fourteen (14) calendar days unless stated otherwise in the Agreement.
5. Other Requests	Fourteen (14) calendar days unless stated otherwise in the Agreement.

### 2.05 ACCESS AND SITE COORDINATION

- A. Provider is responsible for on-site installation supervision throughout the duration of the project. Provider shall ensure compliance with access requirements and license use hours in the Site License, Attachment A of Exhibit C.
- B. The Provider is responsible for maintaining fire lane access and clearances at all easements at all times.
- C. The Provider shall coordinate closely with the Purchaser to ensure all construction activities minimize impact on Purchaser operations at the Premises.
- D. The Provider shall schedule its operations on the job site to provide for:

1. Pedestrian/vehicle ingress and egress from site at all times, except if otherwise approved in writing by the Purchaser.
  2. Driveways and Entrances: Keep driveways and entrances serving Premises clear and available to Purchaser, Purchaser's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
  3. The construction schedule shall show the start and end of any partial closures to any site access points. Provider shall notify the Purchaser **seventy-two (72) hours** in advance of any closures.
  4. Provider shall notify Purchaser immediately upon any change in project schedule or operation that may affect access. Purchaser will be responsible for notification to affected parties.
- E. Provider, EPC Contractor, EPC Contractor's employees, and all subcontractors shall adhere to applicable Purchaser requirements as well as all Federal, State, and County Public Health and Owner COVID-19 or other health and safety protocols.
- F. Noise: Provider acknowledges that adjacent facilities may remain in operation during all or a portion of the Work, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Agreement.
- G. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.

#### 2.06 EXISTING FACILITIES, PROTECTION AND REPAIR

- A. Provider shall protect and maintain all the existing facilities within the project limit. Any damage caused to the existing facilities by the Provider shall be noticed to the Purchaser in writing and repair method shall be approved by the Purchaser prior to implementing except in an emergency for life safety or critical facilities.
- B. Provider is responsible for ensuring EPC Contractor restores all vegetated areas disturbed by construction.
- C. Any changes to Purchaser property required for the Project, including, but not limited to: grading, and repair of damage caused by Contractor, are the sole responsibility of the Provider.

#### 2.07 UNDERGROUND UTILITIES

- A. The Provider is responsible for locating and protecting all underground utilities. Provider shall utilize Ground Penetrating Radar (GPR) for all areas with underground construction. Where critical underground facilities exist, Provider shall perform potholing/hand digging to locate the utilities.
- B. Known existing utilities and improvements have been located with as much care as possible with the aid of Purchaser records. However, the Purchaser assumes no responsibility as to their exact location. Provider shall take measures necessary to

protect existing utilities and improvements. Any damages to existing utilities and improvements not included for demolition shall be repaired and or restored by the Provider without cost to the Purchaser.

- C. The Provider shall contact the regional notification center, "Underground Service Alert," and schedule work required to allow for ample time for the center to notify its members and, if necessary, for any member to field locate and mark facilities as directed in Government Code Sections 4216 to 4216.9. Every person planning to conduct any excavation shall contact the appropriate regional notification center at least two (2) working days, but no more than fourteen (14) calendar days prior to commencing the excavation.
- D. Provider is directed to and shall comply with Section 4216 et seq of the California Government Code.

## 2.08 CLEANUP

- A. Provider is responsible for patching and repairing all building penetrations performed by the Contractor during installation. Conduit installed on the exterior of Purchaser structures shall be painted to match.
- B. Provider is responsible for disposing of all generated trash. Purchaser-owned dumpsters and trash bins may not be used for storage or disposal.
- C. Provider shall clean all work areas on a daily basis and equipment after project completion. Contractor shall ensure that work areas are clear of construction debris, spoils and that all demolition and repair has been completed prior to releasing work areas to public access.
- D. Provider shall provide the necessary personnel, equipment, and materials needed to maintain cleanliness. Conduct daily inspection to verify that requirements of cleanliness are being met.
- E. Provider shall use cleaning materials and equipment which are compatible with the surfaces being cleaned. The Provider shall use broom and vacuum cleaner to remove gravel and other loose materials generated by the Provider operations to keep job site surfaces clean.
- F. Upon completion of Work, the Provider shall remove from the vicinity of work and dispose of all surplus materials and equipment used by the operations and completes all the cleaning and removal of rubbish and debris.
- G. The Contractor shall dispose of materials, equipment and debris in compliance with all federal, state, and local regulations.

## 2.09 WARRANTIES

- A. The Provider shall be required to provide and maintain the following minimum warranties consistent with Net Energy Metering requirements and the California Public Utility Code 387.5(d)(4):

1. At least twenty-five (25) years for any PV modules
  2. At least ten (10) years for all inverters
- B. Meters shall have a 1-year warranty to ensure against defective workmanship, system or component breakdown.
- C. Warranties for other energy systems shall be provided per the Agreement. Where warranty requirements are in conflict, the more stringent shall apply.

## 2.10 ENERGY SYSTEM CRITERIA

- A. Designs shall meet all performance criteria (e.g., production, storage, resiliency, etc.) outlined in the Agreement.
- B. The Provider shall be responsible for identifying the appropriate conduit/conductor routes in coordination with the Purchaser during the design review process. Provider shall adhere to the number of tie-ins at each site as required in the Agreement. Any changes to interconnection schemes identified in the Agreement shall be approved in writing by the Purchaser.
- C. Purchaser has submitted initial interconnection applications. Provider is responsible for assuming all utility coordination and interconnection related responsibilities, including completing and/or modifying all interconnection applications and completing all work required to achieve Permission to Operate (PTO) with the local utility under requirements of CPUC Net Energy Metering (NEM) 2.0.
- D. The Provider shall work with the Purchaser as needed to provide assessment of potential noise.
- E. System shall be designed to perform in the ambient temperature conditions where installed. The Provider shall ensure that all equipment is rated for sustainable operating temperatures over the ambient temperature range at the Premises.
- F. Measurement and metering shall meet requirements stated in the Agreement. Data acquisition and storage systems for the revenue grade meter shall meet 99.5% data recovery—i.e., no more than 0.5% data loss.
- G. Provider shall work with the Purchaser to ensure that monitoring and alarm systems are sufficient to ensure safety and to safely mitigate hazards if hazardous conditions should arise.

## **EXHIBIT D.3 – REVIEW PROCESS, SUBMITTALS, COMMISSIONING, AND CLOSEOUT**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. This specification applies to the design, construction and commissioning of a complete energy system as described here and elsewhere in the Agreement.

### **PART 2 - REVIEW PROCESS AND SUBMITTALS**

#### **2.01 DESIGN PHASE**

- A. The Purchaser shall review and approve design documentation based on the requirements in this Specification, the Agreement and the technical specifications. The design drawings and associated documents shall represent the intended and agreed upon scope for the Project. The Provider shall be solely responsible for providing complete design and engineering, compliant with all applicable laws and the requirements of the Agreement, by and through appropriately licensed design professionals, including, without limitation, and registered professional engineers employed by, or under direct contract with Provider. The design professionals so engaged shall serve as the Engineer(s) of Record.
- B. The Provider shall organize and conduct weekly meetings during the design process, including providing formal meeting minutes.
- C. As noted in Exhibit D.1, three phases of formal design submittal are required: 30% Schematic Design (SD), 60% Design Development (DD), and 90% Issued for Permit Documents (IFP), as well as a final Construction Document (CD) set following AHJ approval.
- D. The Provider shall submit an electronic submittal package for each Design Stage including, but not limited to the items outlined below in Table 1.
- E. The Provider shall host formal design review meetings with the Purchaser and their representatives for each design stage submittal, and maintain and distribute formal meeting minutes for each stage. The Provider shall submit the design stage package no less than five (5) business days prior to the design review meeting. The Purchaser and their representative(s) will provide formal comments for each phase of design and shall meet the review submittal deadlines specified in Exhibit D.2, Section 2.04.
- F. The Provider shall address all Purchaser comments in writing in the Purchaser's preferred format and provide their comments with the next design submittal. The Purchaser's review period will not begin until a complete design package and comment responses are received.
- G. Purchaser comments shall be incorporated into each successive stage of the design review.

**Table 1 – Design Submittal Packages**

Submittal Requirement	30% Schematic Design (SD)	60% Design Development (DD)	90% IFP Set
1. Cover Sheet (TOC, project details, designers of record, Equip. Summary Table <sup>1</sup> , etc.)	X	X	X
2. PV System Sizes & Production Estimates	X	X	X
3. Site Plan (including array names, interconnection details, conduit routes)	X	X	X
4. Interconnection Equipment Assessment	X	X	X
5. Electrical Site Plan Drawings, incl. Balance of System	X	X	X
6. Electrical Single Line Diagrams w/ Utility Meter #s (Including ex. PV)	X	X	X
7. Float System and anchoring and tethering details	X	X	X
8. Detail for moving float system to accommodate pond maintenance		X	X
9. Site Plan (including topographic survey, GPR/UG utilities, easements)		X	X
10. Demolition Plans (tree/lights first submittal, comprehensive for final submittal)		X	X
11. Trench/Conduit Routes, Vault Locations, UG/Vault Details		X	X
12. DC String Wiring Plans (with corresponding inverter locations & IDs)		X	X
13. Electrical Grounding Details		X	X
14. Signage Details		X	X
15. Monitoring System & Metering Details		X	X
16. Lighting Plan, As-Builts, Details and Photometric Plans		X	X
17. Equipment Pads, Mounting Details and Elevations		X	X
18. All specifications related to the Scope of Work		X	X
19. Construction Schedule		Prelim	Detailed
20. Interconnection Plan		X	X
21. Interconnection Application Revision & Any Utility Coordination/Correspondence			X
22. Array Elevation and Plan View		X	X
23. Structural Drawings and Calculations		X	X
24. Equipment Manufacturer's Cut Sheets and Details		X	X
25. Complete list of all Subcontractors, incl. specialty			X
26. Site Specific Construction Management Plan		X	X
27. Contractor's Commissioning Protocol		X	X
28. Complete Design Package Sufficient for AHJ Review			X

**Notes:**

1. Equipment Summary Table shall include the following with details: Array No/Name, Dimensions, Azimuth, Tilt, Module Model/Count, Inverter Model/Count, Nameplate, No. of Strings, Canopy Column Count.

- H. The Purchaser will formally approve, in writing, each phase of the design upon determination that the design is progressing at or beyond the percentage completion expected at stage. The Provider shall not enter a subsequent design phase without the approval of the Purchaser. The Provider and its Contractors are solely responsible for obtaining approvals from the Purchaser and all other Authorities Having Jurisdiction (AHJs).
- I. The Provider shall submit a System Size Spreadsheet showing all system sizes at each phase of design and prior to construction. The System Size Spreadsheet shall include modeling with year one production (kWh), and associated yields (kWh/kWp) per item 2 in Table 1. Along with the System Size Spreadsheet, the Contractor shall provide modeling software output reports, including shade analysis and 8760 production data using PVSyst or Helioscope and assumptions.
- J. The Provider shall conduct an interconnection equipment assessment for each interconnection service prior to the 30% Design submittal. Any issues with existing Purchaser or Utility equipment that may prevent the system from interconnection to the Utility or may require unanticipated upgrades shall be identified at the time of the 30% Schematic Design submittal. The Provider shall document costs for upgrades and compare with any cost assumptions provided and submit to Purchaser for review and approval.
- K. The Provider's IFP submittal set shall include specifications and/or details for the following items, either detailed on drawings or provided as specifications. Any less stringent deviations from technical specifications shall be identified and submitted as redlines with the IFP submittal.
  - 1. Cutting and Patching
  - 2. Subsurface Investigation
  - 3. Concrete Forming, Reinforcing, and Finishing
  - 4. Structural Steel Framing
  - 5. Metal Fabrications
  - 6. Float system including Anchoring and Tethering
  - 7. Painting and Coating
  - 8. Signage
  - 9. Testing and Commissioning
  - 10. Exterior Lighting and Controls
  - 11. Earthwork
  - 12. Pavement Specialties
- L. The Provider shall submit complete electronic copies of all Final Approved Permit Sets (Issued for Construction) drawings prior to Construction. This document set shall address all comments made by the Purchaser on the 90% submittal and incremental changes as required by the AHJ. Construction FNTF shall not be provided until the complete document set has been provided.



## 2.02 CONSTRUCTION PHASE

- A. Provider shall obtain all required permits and approvals from the AHJ(s) and the Utility(s) prior to starting Construction, in coordination with the Purchaser, and shall make copies available to the Purchaser of all permit applications and approvals.
- B. Purchaser shall provide formal written approval for construction upon receipt of acceptable Final Approved Permit Sets with all necessary AHJ approvals. Provider shall submit executed written approval documentation to the Owner prior to commencing construction.
- C. Prior to beginning construction, Provider shall:
  - 1. Provide a comprehensive onsite Construction Management and Safety Plan for the construction of the Project in accordance with all applicable laws, policies and OSHA compliant safety practices. Plan should include, at a minimum, address of local emergency medical facilities, project directory, information on Sub-Contractors, coordination with Purchaser staff during specific construction tasks, and communication protocols.
  - 2. Provide an updated detailed Construction Schedule and a three-week look-ahead. Provider shall keep the detailed construction schedule up to date. Accurate and up to date three-week look-ahead schedules shall also be provided throughout construction on a weekly basis the day prior to the weekly meeting.
  - 3. Conduct a kickoff meeting with the Purchaser to confirm all logistics for mobilization and start of construction.
- D. The Provider shall provide Manufacturers' Installation Manuals for major project components, including, but not limited to: PV modules, inverters, racking or mounting structure, monitoring systems, and other major electrical equipment.
- E. Prior to ordering equipment and materials, the Provider shall verify all measurements at each project site and notify the Purchaser in writing on any discrepancies between the drawings and site measurements.
- F. Any proposed changes to design or scope of work shall be submitted in writing to the Purchaser for approval before any changes are made. Submittal for changes shall contain all necessary details of the proposed changes, detailed costs, and updated energy system details, including size and production spreadsheet.
- G. CONSTRUCTION SUBMITTALS: Shall be provided by the Contractor as detailed in Table 2, below.

**Table 2 – Construction Submittals**

<b>Construction Submittal</b>	<b>Submittal Schedule</b>
1. Construction Mgt & Safety Plan	No later than 15 days prior to site mobilization.
2. Construction Schedule	- Three-week look-ahead schedule updated and submitted weekly prior to the weekly meeting. - Detailed schedule regularly maintained and provided every two weeks or as-requested.
3. Manufacturers' Installation Manuals	No later than 5 days after construction kickoff meeting.
4. Weekly Meeting minutes	No later than the day prior to the next scheduled project meeting.
5. Test Reports	As available
6. Factory Tests	As available
7. Field Tests	As available
8. Design Deviations/ Requests for Information	As-needed. All deviations shall be accurately and legibly detailed by the Contractor and approved by Designer of Record, then presented to the Owner/Owner Reps in the
9. Proposed Change Orders	Prior to commencing any changed work. Shall be formally submitted and approved by the Owner/Owner Rep in writing.

**2.03 COMMISSIONING PHASE**

- A. The Provider shall provide complete commissioning of all energy systems installed as part of this project. Commissioning protocols shall be provided in the form of a Method of Procedure (MOP) for all major energy systems. Protocols shall adhere to all Agreement requirements and follow standard industry practices. Commissioning Procedures are shown in Attachment D.3-A.
- B. Prior to commencement of commissioning tasks, the Provider shall notify the Purchaser. The Provider shall reference the previously submitted procedures and provide a schedule of all commissioning, testing and safety activities.
- C. Provider shall provide electricians and support to Purchaser and Purchaser representative for verification of commissioning and workmanship, including providing reasonable notice prior to conducting commissioning activities so Purchaser representatives may observe.
- D. A detailed and comprehensive commissioning report shall be submitted within 15 days after commissioning has been completed on a site-by-site basis.

2.04 CLOSEOUT PHASE / PROJECT ACCEPTANCE

- A. Provider shall deliver document submittals to the Purchaser per Table 3 in order to achieve each completion milestone and successfully close out the project. A digital library will be created by the Purchaser, and the Provider shall upload organized and collated digital versions of closeout documentation for each of the items listed below. The Purchaser will review each submittal and formally approve each item upon review and confirmation of completeness. Incomplete submittals shall be corrected by the Provider prior submittal acceptance. A formal notice by the Provider shall be provided for each milestone acknowledging this checklist and successful submission of completed and approved checklist items. The Purchaser shall review and formally approve the notice.

**Table 3 – Closeout Document Submittals & Milestones**

<b>Part 1. Substantial Completion</b>		<b>Complete</b>	<b>Date</b>
1	AHJ Substantial Completion Notice (As-needed for Interconnect)		
2	Schedule for Project Closeout		
3	Commissioning Protocol Results		
4	Utility Interconnection Request Submitted		
5	Contractor Notice of Substantial Completion		
<b>Part 2. Commercial Operation Date - COD (All Substantial Completion items plus:)</b>			
6	Utility Permission-to-Operate (PTO) Notice		
7	AHJ(s) Acceptance/Completion Documentation		
8	Contractor Commissioning Documentation		
9	As-Built Plan Sets (See Item C)		
10	Major Equipment Cut Sheets/Warranty Documentation		
11	As-Built Performance Modeling & 8760 Data		
12	DAS Login Access and Credentials & Verification of Function		
13	Punchlist – Major/Safety Items Signed Off by		
14	O&M Manual Draft (See Item E)		
15	Subcontractor Notices of Completion		
16	Provider Formal Commercial Operation Notice		
19	Purchaser Commissioning Inspection Completed		
20	Operation and Safety Training (for Purchaser)		
21	Capacity Test Results		
<b>Part 3. Final Completion/Acceptance (All COD items plus:)</b>			
17	Punchlist – All Lists Signed Off (See Item D)		
18	O&M Manual Final		
22	Inverter/Data Logger Serial Numbers, IDs, Locations Provided and Functional		
23	EPC Contractor Notice of Final Completion filed		

- B. Provider shall ensure successful interconnection with the Local Electric Utility and achieve permission to operate (PTO) from the Utility. Provider shall coordinate with the Purchaser to ensure the interconnected service has been placed on the intended and appropriate Utility tariff.
- C. For energy delivery and purchase under the Agreement, achieving the above milestone shall be interpreted as follows:
  - Commercial Operation Date (COD): Provider has met all requirements of Section 3.4 of Exhibit C, General Terms and Conditions and Purchaser has issued a notice confirming compliance. Provider may begin recording energy delivered for the purposes of charging the Purchaser.
- D. Provider shall submit complete digital "As-Built" Record Drawings for all sites for review and approval by the Purchaser. Final as-built plans shall be provided in both AutoCAD (CAD) and portable document format (PDF). All deviations from the sizes, locations and other features shown in the Final CD/IFC plan sets must be captured in detail in the As-Built Record Drawings, including as-built sketches, details, and clarifications. Details shall include locations of work buried under or outside each building, including, without limitation, all utilities, plumbing and electrical lines and conduits. All directional boring logs, depths and routes and foundation locations and depths shall be accurately shown on As-Built Record Drawings.
- E. Undertake punch-list walks with Purchaser, ensure completion of punch-list work and provide comprehensive labeled, time stamped photo library of complete items. The Provider shall submit documentation of Punch List Completion for items under control of the Provider within 30 days of the Purchaser issuing the Final Punch-List. The document must be signed and show proof of completion of each item. Additional requirements in Section 3.4, Exhibit C, General Terms and Conditions.
- F. The Provider shall submit to the Owner a comprehensive Operations and Maintenance (O&M) document Component O&M manuals shall be collated into a single, bookmarked portable document format (PDF) file. The document shall be a well-organized, comprehensive and custom document with details for each component. The O&M document should not duplicate closeout submittal items listed in Table 3 and should not be a collection of manufacturers cut-sheets. The intention of the document is to provide an overview of the energy systems installed for the Purchaser's reference to safely interact with the systems, monitor performance, contact the Provider during operation, respond during or after an emergency, and to understand the regular maintenance that will occur. The O&M document shall include the following minimum items:
  - 1. An overview and description of the energy systems installed, including system nameplates, system functions and key performance details. Summary shall also include the date and reference number for: Permission-to-Operate (PTO), Commercial Operation Date, Final Completion, and AHJ Closeout.

2. A simple site plan identifying the locations of major equipment, array/system naming conventions, monitoring system locations, and disconnects or other safety related equipment.
  3. Safety details, including shut-down procedures.
  4. Contact information for routine items and for emergencies.
  5. Monitoring system details including information for accessing the platform
  6. Maintenance information, including schedules, responsibilities for ongoing maintenance, and Standard Operating Procedures for O&M personnel. Detail shall include notification and site access protocols for O&M personnel.
  7. Troubleshooting and repair, including responses to typical issues and responsible parties.
- G. Training. Conduct a training for Purchaser staff, with orientation to the energy systems, monitoring platforms, safety procedures, and Operations and Maintenance Manual.
- H. Provider shall provide any other Project documentation required by AHJs to successfully close out permits or meet other project requirements.

## Attachment D.3-A – COMMISSIONING PROCEDURES

### **1 General**

#### **1.1 Description**

- 1.1.1 Beneficial Use and Substantial Completion will depend, on among other things, the successful completion of a series of commissioning activities. This exhibit describes the relevant DC and AC test procedures.
- 1.1.2 Contractor may recommend additional tests or procedures for the commissioning of the equipment, as long as the replacement tests meet or exceed the requirements below. Customer must approve in writing any alternate testing plans.

#### **1.2 Requirements**

- 1.2.1 Contractor technical personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of the DC and AC system. These commissioning procedures include the tests outlined in this **Exhibit G** as well as other standard tests, inspections, safety and quality checks.
- 1.2.2 All testing and commissioning will be conducted in accordance with the manufacturer's specifications.
- 1.2.3 Customer has the right to request that the equipment manufacturer and Customer's representative observe the work of the Contractor during the testing, at Customer's expense.
- 1.2.4 All testing must be performed with strict adherence to a safety plan, and OSHA requirements, particularly in regards to lock-out/tag-out procedures, exposure to energized circuits, and arc flash hazard.

#### **1.3 Documentation**

- 1.3.1 Maintain logs of all commissioning activities. Logs should take the form of a checklist with entries for initials of technician, result of test or check, pass/fail criteria, etc.
- 1.3.2 Use manufacturer supplied logs where provided by the manufacturer, and develop additional logs where needed.
- 1.3.3 Include all commissioning reports and logs in the final turnover package.

#### **1.4 Commissioning Objectives**

- 1.4.1 **Safety** – ensure that all functional systems protecting life safety are operating as intended.
- 1.4.2 **Complete** – work is finished according to the plans, and in a state ready for operation.
- 1.4.3 **Code Compliant** – work has been completed in accordance with project applicable codes and other AHJ requirements.
- 1.4.4 **Workmanlike** – work is neat, orderly, and performed with attention to quality.
- 1.4.5 **Robust** – the work will last the duration of the project lifetime.
- 1.4.6 **Performance** – the system performs as intended.

## **2   Commissioning Activities**

### **2.1   General Facility Checks (Visual Inspections)**

- 2.1.1   Array is in the location specified in the Construction Documents (the “plans”).
- 2.1.2   Inspect the array for unanticipated sources of shading.
- 2.1.3   Major equipment is located where indicated in the plans.
- 2.1.4   Equipment access clearances and egresses are as indicated in the plans, and unobstructed.
- 2.1.5   Inspect the site for trash, debris, or unfinished work areas.
- 2.1.6   All fence gates are installed correctly, fully functional, and equipped with a lock.
- 2.1.7   Site accesses are clear and complete.

### **2.2   Civil Checks (Visual Inspection)**

- 2.2.1   All drainage system improvements are placed as indicated in the plans.
- 2.2.2   All compaction test inspection reports, as required, have been completed and reviewed.
- 2.2.3   Vegetation or dust control measures are as indicated in the plans.

### **2.3   Structural Checks (Visual Inspection)**

- 2.3.1   Racking hardware has been installed in accordance with the plans and the manufacturer’s installation instructions.
- 2.3.2   A sample of structural fastener torque has been checked and indicated with a paint pen or other marker on the fasteners.
- 2.3.3   All equipment is hung level and plumb.
- 2.3.4   All equipment foundations are sized in accordance with the plans.
- 2.3.5   All equipment anchorage is complete and torque checked. Include seismic anchorage where required.

### **2.4   Tracker System Checks (Functional Tests)**

- 2.4.1   Inspect racking for installation completeness, including all wiring support devices, dampeners, and bearings.
- 2.4.2   With support of tracker manufacturer, operate the tracker manually through full range of motion.
- 2.4.3   Verify that racking is calibrated properly, and achieving the commanded tilt angles.
- 2.4.4   Check all racks for signs of binding, interference, unanticipated noise, etc.
- 2.4.5   Manually trigger wind and flood stow sensors, if part of the installation, and verify that the tracker returns to the intended stow position.

### **2.5   General Electrical System Checks (Visual Inspection)**

- 2.5.1   All enclosures are suitable for the installation location.
- 2.5.2   Enclosure openings have been properly sealed, including gland plates, open knock-outs, and other temporary openings.

- 2.5.3 Conductor labeling is consistent and as indicated in the plans.
- 2.5.4 All conductors have strain relief where required and are properly supported.
- 2.5.5 Wiring and conduit shows no sign of damage.
- 2.5.6 Conduit expansion fittings are supplied where required.
- 2.5.7 Wiring is installed in a logical and workmanlike manner.
- 2.5.8 Conduit bodies and fittings are tight and secure.
- 2.5.9 All aluminum conductor terminations include anti-oxidant coating.
- 2.5.10 Termination torque is at manufacturer specifications, and is marked with a paint pen or other mark.
- 2.5.11 Wire management devices on exposed PV Wire have been installed properly.
- 2.5.12 String wiring is supported every four (4) feet minimum.
- 2.5.13 String wiring is not strained, kinked, abraded, or exposed to sharp edges.
- 2.5.14 Field PV Wire terminations are tight and secure.

## **2.6 Insulation Resistance Checks (Functional Tests)**

- 2.6.1 Perform insulation resistance testing (Megger testing) on the following circuits:
  - (1) DC source circuit home runs
  - (2) DC output circuits from combiner boxes to recombiners (if applicable)
  - (3) DC feeders from recombiners to inverters (if applicable)
  - (4) AC feeders from inverters to transformers
- 2.6.2 Do not test DC circuits with modules in the series.
- 2.6.3 Reject circuits that deviate from the average insulation resistance of the category, or otherwise show signs of insulation damage.
- 2.6.4 Record all insulation resistance test values, including date, time and ambient temperature during the test.

## **2.7 DC System Checks (Visual Inspection and Functional Tests)**

- 2.7.1 Check polarity of all strings prior to closing combiner fuse holders (if applicable).
- 2.7.2 Check polarity sequentially from combiner boxes to recombiners to inverter DC terminals prior to operation (if applicable).
- 2.7.3 Check for proper electrical behavior of PV modules and strings by recording I-V curve traces for all strings. Capture irradiance and temperature at time of measurements.
- 2.7.4 Analyze results of string operating parameters and record any strings that display abnormal results.
- 2.7.5 Verify torque on all field cable terminations in DC combiners or recombiners (if applicable). Mark accepted terminations with a paint pen.



- 2.7.6 Thermographic imaging may be used on DC recombiners and inverter terminations to eliminate poor terminations and hot spots.

## **2.8 Inverter System Checks (Visual Inspection and Functional Tests)**

- 2.8.1 Commission inverter in accordance with all manufacturer recommendations, manuals, and commissioning checklists.
- 2.8.2 Verify inverter settings including communication settings, startup delay, power factor, ramp, and other operational settings.
- 2.8.3 Observe inverter through full cycle of operational behavior, including startup, planned shut-down and emergency shutdown. Observe and record any error codes, or abnormal behavior.

## **2.9 AC System Checks (Visual Inspection and Functional Tests)**

- 2.9.1 Commission switchgear, circuit breakers, and other devices in accordance with prudent electrical practice, and all manufacturer recommendations.
- 2.9.2 Verify that settings on all adjustable-trip breakers match settings specified in the Construction Documents.
- 2.9.3 Check and record continuity of all grounding systems from equipment to grounding electrode system.
- 2.9.4 After the system is in an operational state:
  - (1) Perform thermographic imaging on all terminations and equipment. *Pay particular attention to arc flash hazards during thermographic testing.* For equipment that is unsafe to open while the system is energized, restrict imaging to enclosure dead-fronts, or perform imaging immediately after system has been operated at high output levels, and then de-energized and locked/tagged out.
  - (2) Record and resolve any terminations or devices that are displaying abnormal temperature.

## **2.10 Medium Voltage System Checks (Visual Inspection and Functional Tests)**

- 2.10.1 Perform and record high voltage (VLF) testing on all medium voltage conductors and terminations.
- 2.10.2 Operate all switches, vacuum breakers, and other devices.
- 2.10.3 Test operation of all door, switch and relay interlock devices.
- 2.10.4 Perform all manufacturer recommended commissioning activities on switchgear, breakers, reclosers, and other devices as applicable.
- 2.10.5 Verify and record all protective relay settings, as specified in the Construction Documents.
- 2.10.6 Complete any additional commissioning, testing or recording activities required by the Utility, PPA or Interconnection Agreement.

## **2.11 DAS/SCADA System Checks (Functional Tests)**

- 2.11.1 Verify communications settings on all devices.
- 2.11.2 Measure and record azimuth and tilt of all pyranometers.

- 2.11.3 Check communication and sensor cables for secure mounting, and protection from physical damage.
- 2.11.4 Complete manufacturer recommended commissioning checklists on all communication devices.
- 2.11.5 Contact DAS Vendor Support while on-site with the system in an operational state to verify proper communication and setup of all communicating devices.

**Exhibit E – Site-Specific Requirements**

## **Exhibit E – Site-Specific Requirements**

### **1. Provider Responsibilities:**

- 1.1. All System structures shall comply with local, State and Federal law and Provider shall be responsible for obtaining the necessary Governmental Approvals in connection with the construction of same.
- 1.2. Provider shall be responsible for all tree trimming and tree removal in order to facilitate the installation of the Systems. Purchaser shall acknowledge and approve removal of trees identified by Provider, in order to install the system and such approval shall not be unreasonably withheld. Irrigation re-routing shall not be the responsibility of the Provider.
- 1.3. Provider intends to interconnect the System to Purchaser-owned 12 kV service conductors at a mutually agreeable location. Provider assumes that the existing conductors and service equipment are sufficiently capable of accepting the additional electrical load of the System. Provider shall not bear financial responsibility for any required upgrades to the pre-existing electrical system.
- 1.4. Provider shall be responsible for all fees associated with the interconnection application.
- 1.5. Provider assumes that soil conditions are class 3 soils, and not such soils that are rocky, sandy, contaminated, ground water, caving, or otherwise have problematic construction limitations. If soil conditions prove to be other than class 3 soils, Provider shall not be responsible for such additional expenses as a result of additional subterranean geotechnical work including boring and trenching. Provider shall work with Purchaser in good faith to determine a mutually acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.
- 1.6. Provider agrees to construct the System in no more than one construction phase.
- 1.7. Provider shall be responsible for all inspection and inspector costs associated with the installation of the system.

### **2. Mosquito Abatement Requirements**

- 2.1. Provider acknowledges that Purchaser must comply with certain Legal Requirements and regulations with regard to mosquito abatement on and around the Premises, and that placement of floating photovoltaic (PV) array (“System”) may interfere with those activities, or create or exacerbate mosquito breeding environments. To ensure Purchaser’s compliance with mosquito abatement requirements and to control mosquito populations associated with the Project, Provider shall comply with the following conditions.
- 2.2. Marin/Sonoma Mosquito and Vector Control District (“MSMVCD”) will continue to perform mosquito surveillance and abatement measures at the Premises, including within and immediately around the System, and conduct abatement measures (as needed). This includes the continued invoicing of such services to the Purchaser.
- 2.3. Provider shall design Project to minimize open water within the System.
- 2.4. Provider shall design Project to allow access for MSMVCD personnel and equipment in and around the Project. Such equipment includes but is not limited to:

helicopter; watercraft, including air boat, flat bottom boat, and kayak; truck-based applicators; backpack sprayers and blowers; and hand applicators.

- 2.5. Provider shall allow access for MSMVCD personnel and equipment in and around Project, including onto the solar array floats, for mosquito abatement treatment and surveillance.
- 2.6. MSMVCD will determine the method of mosquito abatement including the type of equipment and chemical(s). MSMVCD will determine the timing of mosquito abatement activities in consultation with Ellis Creek Water Recycling Facility (ECWRF) staff. Purchaser shall make all reasonable efforts to notify Provider in advance of mosquito abatement activities that may impact installation, operation, or maintenance of the Project.
- 2.7. Provider to reimburse Purchaser for up to \$10,000 annually for MSMVCD costs directly attributable to Project installation, maintenance and operations.
- 2.8. Provider shall provide training to MSMVCD staff regarding safe access in, on, and around the System, and be available for communication with the Purchaser and MSMVCD regarding all mosquito surveillance and abatement activities at the Premises.

**Exhibit F – Performance Test**

## **EXHIBIT F**

### **Performance Test**

This Exhibit F sets forth the methodology for determining the Performance Test Results for a given Test Period (each such test, a “Performance Test”). The Performance Test is based upon the methodology for determining a Weather-Corrected Performance Ratio as described in the National Renewable Energy Laboratory (NREL) Technical Report TP-5200-57991 April 2013.

#### **1.0 General Requirements**

The Performance Test is an Irradiance-Corrected Performance Ratio Test carried out over the Test Period.

The Performance Test set forth in this Exhibit F shall be performed by Provider and verified by Purchaser.

Purchaser shall provide Provider access to the data monitoring system throughout the term of the Performance Testing.

Starting at the end of year two following the Commercial Operation Date, a Performance Test will be run at the end of every two-year interval until the end of the contract period. The results of each Performance Test shall be provided to Purchaser within sixty (60) days following the end of a given Test Period.

#### **4.1 Test Period**

The time period for the Performance Test shall be two (2) consecutive years (each a “Test Period”).

The “Excluded Data” during the Test Period shall be defined as set forth in Section 4.5.3 of this Exhibit F.

#### **4.2 Required Measured Data**

The measured data for the Performance Test shall include:

1. Plane of Array (POA) Irradiance in Watts/meter<sup>2</sup> (W/m<sup>2</sup>)
2. Energy production in Watt-hour (Wh).

#### **4.3 Instrumentation Requirements**

During the Performance Test the following instrumentation shall be used to take measurements:

#### **4.3.1 Global Horizontal Irradiance (GHI) and Plane of Array (POA) Pyranometers**

GHI shall be measured using ISO 9060 Secondary Standard grade pyranometers.

POA pyranometers are to be installed in an orientation equal to that of the plane of the array. If more than one plane of array exists, then POA pyranometers are to be installed for each unique plane of array.

At least one (1) pair of pyranometers shall be installed for every 20 Megawatts (MW) of Alternating Current (AC) capacity of the System. No less than one (1) pair of POA pyranometers shall be installed for each unique plane of array.

The pyranometers shall be installed reasonably proximate to the PV arrays they are monitoring. Each member of a pyranometer pair shall be reasonably co-located to each other.

#### **4.3.2 Energy Meter**

The Energy Meter shall be the revenue grade energy meter for the System.

#### **4.4 Instrumentation Calibration Requirements**

Each instrument used to measure data during the Performance Test shall have been calibrated by an accredited calibration laboratory or the manufacturer.

Each instrument used to measure data during the Performance Test shall have a calibration certificate that is not expired.

Provider shall provide Purchaser with a copy of the calibration certificate for each instrument used to measure data during the Performance Test.

#### **4.5 Data Requirements**

##### **4.5.1 Collected Dataset**

When the System contains multiple instruments of a given type, the data from each type shall be averaged to produce an averaged data reading for each instrument type.

During the entire Test Period the measured data shall be collected at one (1) minute intervals to produce the “Collected Dataset” over the Test Period.

##### **4.5.2 Averaged Dataset**

The collected data within in each one (1) hour interval comprising the Collected Dataset shall be averaged over each interval.



Any given one (1) hour interval that contains one or more one (1) minute intervals that are considered Excluded Data are to be excluded from the Collected Dataset, as described in more detail in Section 4.5.3.

All remaining one (1) hour averaged data, less the Excluded Data, shall constitute the “Averaged Dataset” over the Test Period.

#### **4.5.3 Excluded Data**

Data collected during times when any of the following conditions apply shall be considered Excluded Data and excluded from the Performance Test:

1. An Event of Force Majeure is in effect.
2. Data from both pyranometers within each pair is either erroneous or missing. For the sake of clarity, the basis of comparison will be between pyranometers of the given orientation, with hourly average discrepancies greater than 3% deemed as erroneous.
3. Irradiance below 300 W/m<sup>2</sup>.
4. Data from the Energy Meter is either erroneous or missing.
5. System outages outside the control of Provider (including utility curtailment of system and utility grid outages).
6. Disconnection by the Purchaser or because of an order issued to the Purchaser by a court or public authority.
7. Disconnections or power regulation by the utility or grid operator.
8. Excessive soiling due to wildfire or other air-borne particulates not contemplated in the annual energy estimate.

#### **4.6 Performance Test Calculations**

The following Performance Test calculations generally follow the recommendations of NREL’s Weather-Corrected Performance Ratio. The Performance Ratio can be described as the ratio of the AC energy production to the theoretical DC energy production of the array. This set of Performance Test calculations account for irradiance variability, but intentionally omit correcting for temperature.

In the following sections, an Irradiance-Corrected Performance Ratio will be calculated for both the modeled System production and actual measured System production. The Performance Test compares the modeled and measured Performance Ratios against each other.

The modeled Irradiance-Corrected Performance Ratio requires a representative modeled AC energy production adjusted for System degradation for the given year in which a particular Test Period ends. This is detailed in the sections below.

For clarity, the Performance Test outlined in this section of Exhibit F specifically calls for exclusion of any and all temperature corrections.

#### 4.6.1 System of Equations

The Irradiance-Corrected Performance Ratio  $PR_{corr}$  requires the calculation of Theoretical DC Energy Production  $E_{DC}$ . This shall be computed by the following equations:

$$PR_{corr} = \frac{\sum E_{AC}}{\sum E_{DC}}$$

$$E_{DC} = P_{STC} * \left( \frac{G_{POA}}{G_{STC}} \right)$$

Where:

**PR<sub>corr</sub>** = weather corrected performance ratio (%)

**E<sub>AC</sub>** = AC energy production (Wh)

**E<sub>DC</sub>** = temperature corrected theoretical DC energy production (Wh)

**P<sub>STC</sub>** = nameplate DC power rating of the System's installed modules (W)

**G<sub>POA</sub>** = POA irradiance (W/m<sup>2</sup>)

**G<sub>STC</sub>** = Irradiance at Standard Test Conditions, equal to 1,000 (W/m<sup>2</sup>)

#### 4.6.5 Irradiance Corrected Theoretical DC Energy Production

For each interval, the irradiance corrected theoretical DC energy production  $E_{DC,mod,j}$  is determined using:

$$E_{DC,mod} = P_{STC} * \left( \frac{G_{POA,mod}}{G_{STC}} \right)$$

$$E_{DC,meas,i} = P_{STC} * \left( \frac{G_{POA,meas,i}}{G_{STC}} \right)$$

Where:

$E_{DC,mod}$  = modeled irradiance corrected theoretical DC energy over one year

$E_{DC,meas,i}$  = measured irradiance corrected theoretical DC energy in time interval  $i$

#### 4.6.7 Modeled AC Energy Production

The Modeled AC Energy Production  $E_{AC,mod}$  shall be equal to the Estimated Annual Production (defined in the Energy Services Agreement) multiplied by the relevant System Degradation Derate  $\phi$ , over the Test Period of two (2) years. The relevant System Degradation Derate is based upon the Year End  $k$  of the Test Period in question, as described in Table 2 below:

**Table 1. System Degradation Derate based on Year End of a given Test Period.**

Test Period	Year End (k)	System Degradation Derate ( $\phi$ )
1	2	99.0%
2	4	98.0%
3	6	97.0%
4	8	96.0%
5	10	95.0%
6	12	94.0%
7	14	93.0%
8	16	92.0%
9	18	91.0%
10	20	90.0%

Where:

$k$  = Year End of the relevant Test Period

$\phi$  = System Degradation Derate (%)

#### 4.6.8 Weather Corrected Performance Ratios

An irradiance corrected performance ratio  $PR_{corr}$  will be calculated for both the measured and modeled System using the following:

$$PR_{corr,mod} = \frac{\phi_k * E_{AC,mod}}{E_{DC,mod}}$$

$$PR_{corr,meas} = \frac{\sum E_{AC,meas,i}}{\sum E_{DC,meas,i}}$$

Where:

$PR_{corr,mod}$  = modeled irradiance corrected performance ratio (%)

$PR_{corr,meas}$  = measured irradiance corrected performance ratio (%)

$\Phi_k$  = System Degradation Derate at Year End  $k$  (%), from Table 2

$E_{AC,mod}$  = Estimated Annual Production (Wh) as defined in Attachment G

$E_{AC,meas,i}$  = measured AC energy production (Wh) in interval  $i$

$E_{DC,mod}$  = modeled irradiance corrected theoretical DC energy production (Wh)

$E_{DC,meas,i}$  = measured irradiance corrected theoretical DC energy production (Wh) in interval  $i$

#### 4.6.9 Performance Test Result

The measured irradiance corrected performance ratio  $PR_{corr,meas}$  will be compared against the modeled irradiance corrected performance ratio  $PR_{corr,mod}$  to determine the Performance Test Result:

$$Performance\ Test\ Results = \frac{PR_{corr,meas}}{PR_{corr,mod}}$$

The Performance Test Results are the Minimum Guaranteed Output as defined in the Energy Services Agreement, Section 14. As described in the Energy Services Agreement Section 14, if the Performance Test Results are greater than or equal to 85 percent of the Modeled AC Energy Production then the System has achieved a Pass for the Test Period in question. A Pass means that no Lost Savings are owed to the Purchaser, and the Performance Test is complete for the Test Period in question.

If the Performance Test Results are less than 85 percent of the Modeled AC Energy Production, then the System has achieved a Fail for the Test Period in question. A Fail shall be treated in accordance with the Energy Services Agreement, Section 14.

## **Exhibit G – Sample Invoice Format**

# Exhibit G – Example Invoice Format



Dear City of Petaluma,

Invoice Number: \_\_\_\_\_  
Invoice Date: \_\_\_\_\_

Thank you so much for working with us. We appreciate your business! White Pine is happy to provide solar energy and cost savings to the City. Please see below your invoice for the time period referenced.

## Address:

**3890 Cypress Dr, Petaluma, CA 94954**

## Energy Charges

Time Period	Energy Delivery [kWh]	Unit Price [\$/kWh]	Total Price [\$]
[ ]	[ ]kWh	[ ]	[ ]

## Additional Charges

Description ( <i>i.e., additional panel cleanings requested by City</i> )	Cost
[ ]	+ [ ]

## Credits

Description ( <i>i.e., reimbursements to City for Mosquito Abatement charges; Lost Savings credits</i> )	Credit
[ ]	- [ ]

<b>Net Due</b>			[ ]
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## Attachments:

1. Performance Test Calculations (see Attachment G-1)
2. Status of Punch-list items
3. Monthly status: Major events occurring during the month (panel cleaning, construction activities, exclusion events, maintenance activities, etc.)

**If paying by check, please make the check payable to:**

[White Pine Development, LLC]

**Good For the Planet. Great for Business.**

If you have any questions concerning this invoice, please contact

1-877-948-7463

(info@whitepinerenew.com)



**Please mail the check to:**

White Pine Development, LLC  
1808 Wedemeyer St., Suite 221  
San Francisco, CA, 9129

If paying by wire or ACH please send to:

<b>Bank Name</b>	[Name of Bank]
<b>Routing Number</b>	[*****1788]
<b>Account Name</b>	White Pine Development, LLC
<b>Account Number</b>	*****1326
<b>Reference</b>	Energy Payment

**Good For the Planet. Great for Business.**

If you have any questions concerning this invoice, please contact

1-877-948-7463

(info@whitepinerenew.com)

**EXHIBIT G ATTACHMENT G-1 ELLIS CREEK PERFORMANCE RATIO CALCULATOR**  
**Monthly Summary of Data**

	A	B	C	D
1	<b>Year</b>		<b>1</b>	<b>2</b>
2	<b>Actual PV Performance</b>	kWh Production	=SUM('Monthly Summary'!C2:N2)	=SUM('Monthly Summary'!O2:Z2)
3		POA West-facing	=SUM('Monthly Summary'!C3:N3)	=SUM('Monthly Summary'!O3:Z3)
4		POA East-facing	=SUM('Monthly Summary'!C4:N4)	=SUM('Monthly Summary'!O4:Z4)
5		Overall POA	=AVERAGE(C3:C4)	=AVERAGE(D3:D4)
6		Performance Ratio	=(C2/(C2*C5))/1000	=(D2/(D2*D5))/1000
7				
8	<b>PPA Technical Parameters</b>	kWh Production	=B23	=C8*0.995
9		POA West-facing	=SUM('Monthly Summary'!C9:N9)	=SUM('Monthly Summary'!O9:Z9)
10		POA East-facing	=SUM('Monthly Summary'!C10:N10)	=SUM('Monthly Summary'!O10:Z10)
11		Overall POA	=AVERAGE(C9:C10)	=AVERAGE(D9:D10)
12		Performance Ratio	=(C8/(C8*C11))/1000	=(D8/(D8*D11))/1000

	<b>Difference</b>	kWh Production	=C2/C8	=D2/D8
		Performance Ratio	=C6-C12	=D6-D12

**System Parameters**

Address 3890 Cypress Dr, Petaluma, CA 94954  
kWdc 5832  
kWac 4000  
kWh Year 1 9074592

Summary of exclusion entries

Exclusion A	xx hours	xx hours
Exclusion B	xx hours	xx hours
Exclusion C	xx hours	xx hours
Exclusion D	xx hours	xx hours
Exclusion E	xx hours	xx hours
Exclusion F	xx hours	xx hours