

OLIVEHURST PUBLIC UTILITY DISTRICT

RESOLUTION NO. 2285

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE OLIVEHURST PUBLIC UTILITY DISTRICT
AUTHORIZING AN ENERGY SERVICES CONTRACT AND
RELATED FACILITY GROUND LEASE FOR SOLAR PROJECTS**

WHEREAS, the Olivehurst Public Utility District (District) operates multiple facilities to provide water, wastewater treatment/collection, parks and fire services to the communities of Plumas Lake and Olivehurst, and

WHEREAS, District provision of services and operation of facilities entails the consumption of considerable electricity and corresponding considerable expense for the District ratepayers and taxpayers; expense that continues to experience recurring electricity rate increases, and

WHEREAS, District has previously offset some of the rising costs of electricity through the construction and operation of solar energy facilities via contract with Pacific Power Renewables, and

WHEREAS, District has negotiated with Pacific Power Renewables to draft contracts for the expansion of District solar energy facilities and the operation thereof, and

WHEREAS, on August 21, 2014, the District has conducted a regularly scheduled public hearing in accordance with California Government Code Section 4217.12 to consider energy services contracts and related facility ground lease for solar projects to be constructed at OPUD property located at 1071 Sugarstick Drive Plumas Lake and the north parking lot of Eufay Wood Sr. Memorial Park, and

WHEREAS, the District Board of Directors finds as follows:

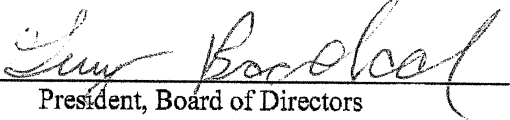
- (1) That the anticipated cost to the District for electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the District in the absence of those purchases.
- (2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Olivehurst Public Utility District as follows:

The Board authorizes the execution of energy services contracts and related facility ground lease agreement shown as Exhibits A and B (respectively), subject to non-substantive changes deemed necessary by OPUD Legal Counsel.

PASSED AND ADOPTED this 21st day of August 2014.

OLIVEHURST PUBLIC UTILITY DISTRICT



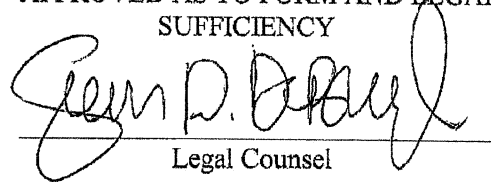
President, Board of Directors

ATTEST:



District Clerk & ex-officio Secretary

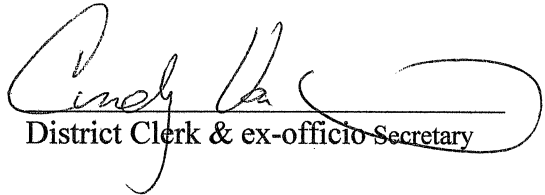
**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**



Legal Counsel

I hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 21st day of August 2014, by the following vote:

AYES, AND IN FAVOR THEREOF:	Director Carpenter, Floe, and Dougherty.
NOES	: Director Bradford.
ABSTAIN	: None.
ABSENT	: Director Burbank.


District Clerk & ex-officio Secretary

“RESOLUTION NO. 2285 EXHIBIT A”

SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement (this "Agreement") is made and entered into as of the ___th day of _____, 20____ (the "Effective Date"), by and between Olivehurst Solar 2, LLC ("Provider"), a Delaware limited liability company, and Olivehurst Public Utility District ("Purchaser"), a California special district; and, together with Provider, each, a "Party" and together, the "Parties").

RECITALS

WHEREAS, Purchaser owns beneficially and of record and occupies certain premises located at _____, identified more particularly in the License Agreement referred to below (the "Premises");

WHEREAS, upon occurrence of the conditions precedent described in Section I of this Agreement, the Site Access and License Agreement (the "License Agreement") respecting the area shown on attached Exhibit A (the "Site") necessary to accommodate the installation, operation and maintenance of the solar photovoltaic system more fully described on Exhibit B hereto (the "System") during the period the System is installed on the Site, for the purpose of delivering electrical energy from the System (the "Electricity") to Purchaser shall have full force and effect;

WHEREAS, Purchaser desires to purchase the Electricity from Provider for use at the Premises, and Provider is willing to undertake to do the same on the terms and conditions set forth herein;

NOW THEREFORE, 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:

AGREEMENT

I. CONDITIONS PRECEDENT

1. ENVIRONMENTAL REVIEW.

- 1.1. CEQA Compliance. The signing of this Agreement shall not create any binding commitment by any party to effect any change in the environment, or

to carry out any project within the CEQA until completion of Environmental Review in accordance with the Provisions of CEQA, as described more fully herein in Paragraph 2.9 of Section II of this Agreement.

- 1.2. This Agreement will form the basis of the project for the purposes of CEQA. Environmental Review will be deemed complete upon the completion of the CEQA proceedings required by law, and further detailed in Paragraph 2.9 et. seq. of Section II of this Agreement, and the expiration of the applicable limitations period within which to challenge the CEQA proceeding.

2. TIME LIMIT FOR CONDITIONS PRECEDENT.

- 2.1. The Parties' obligations to implement Paragraphs 2.4 (Approvals), 2.9 et. seq. (CEQA), 15 (Confidentiality), and 19 (Miscellaneous) will commence on the Effective Date, and the CEQA process, including expiration of the applicable limitations periods within which to challenge the CEQA proceeding, shall be completed within ____ months of the Effective Date.

II. TERMS

1. TERM AND TERMINATION.

- 1.1. Term. The term of this Agreement shall commence on the Effective Date and shall and continue for a period of twenty (20) years from the Commercial Operation Date (as defined below) (the "Initial Term"), unless and until terminated earlier pursuant to the provisions of this Agreement. After the Initial Term, this Agreement shall automatically renew for one (1) additional five (5) year term (the "Renewal Term"), unless (a) this Agreement is terminated before the expiration of the Initial Term or (b) a written notice of non-renewal is given by either Party to the other Party at least one-hundred eighty (180) days prior to the expiration of the Initial Term. The Initial Term and the Renewal Term, if any, are referred to collectively as the "Term." The date on which the Term ends is referred to herein as the "Expiration Date."

1.2. Option to Purchase.

- 1.2.1. Exercise of Option. Purchaser shall have the option, exercisable by written notice to Provider given between the tenth (10th) anniversary of the Commercial Operation Date and the date that is sixty (60) days after the tenth (10th) anniversary of the Commercial Operation Date, to

purchase the System from Provider at a price equal to the fair market value of the System at the time such option is exercised. The written notice shall not constitute an irrevocable offer to purchase the System, but shall constitute a request for the Provider to offer the system to Purchaser at fair market value. In the event Purchaser decides to purchase the system after considering its fair market value, the closing of this purchase option (the "Option Closing") shall occur on the date selected by Purchaser by written notice to Provider, which date shall not be more than one hundred fifty (150) days after the tenth (10th) anniversary of the Commercial Operation Date. At such Option Closing, Purchaser shall pay the option purchase price in U.S. Dollars in immediately available funds. Provider shall transfer title to the System to the Purchaser, and shall do all things reasonably necessary to assign or facilitate Purchaser's right to, and enjoyment of, any other beneficial elements of the System, including Attribute Contracts and Environmental Attributes.

- 1.2.2. Duty of Disclosure. Within 10 days of the issuance of the written notice by Purchaser described in Paragraph 1.2.1 above, Provider shall provide written disclosure to Purchaser of any information about the System, including but not limited to defects in the facilities, as well as contractual and financial information relevant to the System, that would not be readily apparent to Purchaser and that could materially decrease the amount that Purchaser would pay for the System if the Purchaser had known the information. Upon receipt of such information, Purchaser shall have 20 days to notify Purchaser that it has opted to not exercise its option. This disclosure will not provide any guarantee of future performance.
- 1.2.3. Establishment of Fair Market Value. If Purchaser provides notice of its intent to exercise such option, the Parties shall first attempt to agree on a fair market value for the System. If the Parties cannot agree on a value within thirty (30) days from the date Purchaser's notice of exercise of the option is delivered to Provider, then fair market value shall be determined by an independent appraiser experienced in valuing commercial solar photovoltaic facilities mutually acceptable to the Parties, and the date for transfer of the System shall be extended until thirty (30) days after fair market value has been established. If the Parties are unable to mutually agree upon an appraiser, Purchaser shall petition the Superior Court of Yuba County to appoint an appraiser experienced in valuing commercial solar photovoltaic facilities. The cost of such petition shall be borne equally by the parties. "Fair market value" shall mean the price that would be established in an arm's-length

transaction between an informed and willing buyer and an informed and willing seller for the purchase of the System. The determination of fair market value will take into account, as of the date of exercise, all factors that are reasonably justified in determining the value of the System, including, but not limited to: (a) the age and technology of the System; (b) the wear and tear on the System; (c) the ability or inability to depreciate the System; (d) the quality of the siting of the System; (e) the time value of money; (f) the terms in this agreement relating to Attribute Contracts; (g) any liens on the System; (h) the other relevant terms of this Agreement. Purchaser and Provider each acknowledge that the other party makes no representation or promise as to the fair market value of the System at any future time. The appraiser shall issue his or her determination of the exercise price for the option in writing, which determination shall be final. Purchaser shall then have 30 days following issuance of the appraiser's determination to decide whether it wishes to proceed with the purchase. If Purchaser does not exercise its right to purchase within 30 days, or such longer period as may be agreed upon, the transfer shall terminate without further obligation to either party and the lease shall continue for the balance of the Term.

- 1.2.4. Transfer of System Attributes. Purchaser shall have the benefit of any Attribute Contract(s) that accrue from and after the time ownership of System is transferred to the Purchaser. Provider shall deliver and assign and otherwise do all things necessary to transfer to Purchaser all Environmental Financial Incentives, Rebates, and Environmental Attributes consistent with the terms of each such Attribute Contract immediately following Purchaser's acquisition of the system.
- 1.2.5. Termination or Assignment of License Agreement. If Purchaser is the grantor under the License Agreement, upon purchase of the System from Provider in accordance with this Section 1.2, this Agreement and the associated License Agreement shall terminate, except for the provisions expressly surviving such termination.
- 1.2.6. Sale Without Warranty. Any sale of the System under the provisions of this Section 1.2 shall be "as-is" without representation or warranty except as to good title.
- 1.2.7. Right to Inspect. At all times, including prior to any contemplated purchase, Purchaser and any representative appointed by Purchaser may inspect the System at reasonable times and upon reasonable notice to Provider, and without interference with the operation of the System. To allow Purchaser to determine whether to exercise its option, and/or

whether to extend the Term, Provider shall provide to Purchaser all information relating to the System that Purchaser and any appointed representative reasonably requests, including tours of the Systems, provisions of all schematics and plans, and all records (financial, electrical, or otherwise), relating to the System, subject, however, to any confidentiality requirements or restrictions in favor of third parties.

- 1.3. Removal of System and Restoration of Premises at Expiration or Termination. Upon the expiration or termination of this Agreement by its terms, including Paragraphs 1.4 and 10.2 of Section II of this Agreement, Provider shall, at Provider's expense (unless otherwise provided herein), remove the System within one hundred and eighty (180) days after the Expiration Date. In connection with such removal, Provider shall return the Premises to their original condition, except for removal of large electrical conduits installed by Purchaser, and ordinary wear and tear. If Provider fails to timely or completely remove the System, or fails to return the Premises to their required condition, the Purchaser may, upon thirty (30) days' prior written notice to Provider, complete the necessary cleanup and charge Provider for the Purchaser's full costs in doing so. Purchaser can also opt to keep any such property, as it will be deemed abandoned by Provider following expiration of the thirty (30) day notice period. A decision by Purchaser to keep such equipment shall not relieve Provider of the duty to restore the Premises as provided herein.
- 1.4. Provider's Right to Terminate this Agreement. Provider shall have the right, upon 90 days written notice given in Provider's sole and absolute discretion, to terminate this Agreement upon the occurrence of the following circumstances:
 - (a) upon any material Purchaser Default under this Agreement;
 - (b) upon elimination or substantial alteration, if directly caused by an action of Purchaser, of one or more Environmental Financial Incentives. "Environmental Financial Incentives" shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under the California Solar Initiative or any other state's solar program or initiative, incentive tax credits (including investment tax credits arising under the Code) other tax benefits, and accelerated depreciation, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of

Energy generated by the System; and (ii) all reporting rights with respect to such allowances, or other change in law that results in a material adverse economic impact on Provider. Any elimination or substantial alteration of one or more Environmental Financial Incentives which is not directly caused by Purchaser shall not be an occurrence entitling Provider to terminate this Agreement;

- (c) if a material breach by the landlord (lessor, sub-landlord, sub-lessor, licensor or other granting party as may be applicable) under the License Agreement occurs and such breach is not cured within 20 days after written notice is provided;
- (d) any of Provider's rights under the License Agreement terminate and Provider bears no responsibility for any loss of rights; or
- (e) if an unstayed order of a court or administrative agency is entered having the effect of subjecting the sales of Electricity to federal or state regulation of prices and/or service.
- (f) the inability by Provider to obtain satisfactory financing for this project, provided such circumstance arises, and Purchaser is notified, prior to the Commercial Operation Date.

2. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

- 2.1 Work. Provider will inspect the suitability of the Premises and Site for the System, and will perform, and do all things necessary, at its sole cost and expense, to design, construct, install, test and commission the System, to interconnect the System to the local electric utility, to professionally operate, maintain and repair the System and to dismantle and remove the System (“Work”). Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is physically impossible to install a System at the Site or interconnect a System at the point of interconnection, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect with respect to the services related to such System upon written notice from Provider to Purchaser to that effect, and Provider shall reimburse Purchaser for any costs incurred prior to receiving the notice. Provider shall commence construction no later than 6 months after the Effective Date, and execute construction through to completion and the system shall be in full commercial operation within 18 months after commencement.
- 2.2 Notice to Contractors and Sub-contractors. Provider shall, prior to commencing construction, notify all contractors and sub-contractors that Purchaser shall not

be responsible for payment for their work done on the Site, and all contractors and sub-contractors shall acknowledge in writing receipt of such notice.

- 2.3 Access Rights. Purchaser hereby grants to Provider and its employees, agents, financiers, representatives and subcontractors, if any, the right to use such portions of the Premises as are reasonably required in order for Provider and its employees, contractors and sub-contractors, if any, to perform the Work (the foregoing, "Access Rights"). Such portions of the Premises to be made available to Provider shall include, without limitation, a reasonable area for construction lay-down and delivery of materials and equipment. Purchaser agrees that Provider has the right to cause the License Agreement, or another instrument reflecting the right and license described above, to be recorded in the local real property records of the county in which the Site and the Premises are located, and agrees to cooperate with Provider in executing the same. Without limiting or in any manner affecting the rights and interest of Provider under the License Agreement, Purchaser hereby grants the Access Rights to Provider and its employees, agents, financiers, representatives and subcontractors; and agrees that it will not impair, and will not permit third parties to impair, such Access Rights for so long as this Agreement is in effect (and thereafter for such period of time as may be reasonably necessary to remove the System as contemplated by this Agreement). Purchaser also acknowledges that sunlight is essential to enable the System to generate Electricity and therefore agrees that it shall not during the term of this Agreement directly take any actions that would result in blocking or reducing sunlight to the System or otherwise interfere with the System or the System's access to solar radiation.
- 2.4 Approvals; Permits. Purchaser shall assist Provider in obtaining all necessary governmental approvals and other permits and approvals required for the installation and operation of the System, including approval for interconnection of the System with the local electric utility serving the Site (the "Local Utility"). Notwithstanding the above, Provider shall do all things necessary to obtain such approvals and permits, including preparation and submission of all necessary applications. All fees, costs, and expenses associated with approvals and permits, including but not limited to Purchaser's reasonable costs, including legal, accounting, and engineering, associated with obtaining necessary permits and approvals, are the responsibility of the Provider. Purchaser's costs shall be paid by Provider no later than 30 days after billing.
- 2.5 Material Changes to Equipment. Purchaser shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such

changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection.

- 2.6 Completion Notice. When installation of the System is completed and all necessary governmental approvals and other permits and approvals have been received by Provider in connection with the operation of the System and are in full force and effect, Provider shall provide a certificate to Purchaser confirming that the System is capable of generating electricity (the "Interconnection Notice") and of being interconnected with the distribution system of Pacific Gas and Electric Company. The commercial operation of the System will commence on the date specified in the Interconnection Notice (the "Commercial Operation Date"). Purchaser shall take all reasonable efforts to promptly complete each of the activities necessary for Provider to be able to, and to issue, to Purchaser the Interconnection Notice. All direct and indirect costs of Purchaser in securing the Interconnection Notice and of interconnecting with PG&E shall be reimbursed by Provider within 30 days of billing.
- 2.7 Financial Incentives. Subject to the provisions of Paragraph 1.2 et. seq. of this Agreement, all Rebates available during the Term, in connection with the Systems are owned by Provider. "Rebates" shall mean any and all state or utility rebates or other funding offered for the development of photovoltaic system projects, including, but not limited to the California Self-Generation Incentive Program Rebate. Purchaser agrees to take all actions reasonably requested by Provider in order for Provider to obtain all rebates or subsidies made available in connection with the installation and operation of the System by any state government, local government, Local Utility or other source. If Purchaser fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure causes the loss of a Rebate, Purchaser shall reimburse Provider for the full amount of such lost Rebate.
- 2.8 Financial Requirements. Purchaser shall have no financial obligations toward the construction, interconnection, operation and maintenance of the System. This includes, but is not limited to, all trenching, switchgear, permits, materials, site preparation, or labor.
- 2.9 California Environmental Quality Act. Purchaser, as Lead Agency will, at Provider's sole cost, ensure compliance with the terms and conditions of the California Environmental Quality Act.

2.9.1 Provider shall prepare, for issuance by Purchaser, an adequate "Initial Study," along with all applicable supporting studies to

conform with Section 15063, of the California Environmental Quality Act Guidelines (CEQA) for each project site.

2.9.2 Purchaser shall determine the appropriate environmental document based upon the initial study.

2.9.3 In the event Purchaser determines that an EIR or Negative Declaration is required, Purchaser shall follow all statutory and procedural guidelines relevant to Notices, preparation, completion, and consideration of an EIR/Negative Declaration outlined in the California Public Resources Code and CEQA Guidelines.

2.9.4 Purchaser, shall at all times retain independent discretion regarding responses to comments to the environmental document, consideration and approval of the environmental document, findings of feasibility of reducing or avoiding significant environmental impacts, and making the final decision to approve or disapprove the project for CEQA purposes.

2.9.5 If Purchaser decides in the final environmental document that mitigation measures are necessary, Provider shall bear all costs of such necessary mitigation measures.

2.10 In the event Purchaser approves the project following CEQA review, Provider may make a determination pursuant to Section 1.4 of this agreement, as to whether to move forward with the project bearing all costs for necessary approvals and mitigation measures. If litigation should ensue challenging the issuance of a Notice of Determination by Purchaser based on inadequate environmental documentation, Provider shall be responsible for the costs and expenses in the defense of such action.

3. SYSTEM OPERATIONS.

3.1. Provider as Owner and Operator. Unless Purchaser purchases the System in accordance with this Agreement, Purchaser shall have no ownership rights in the System and is only entitled to purchase Electricity. The System will be owned by Provider and operated by Provider, or its contractor, at its sole cost and expense. The System shall not attach to or be deemed a part of, or a fixture to, the Premises. The System shall at all times retain the legal status of personal property of Provider, and Provider shall pay any personal property taxes, assessments or charges owed on the System. In accordance with R&T Code Section 107.6, Provider shall be responsible for any in lieu taxes, or property

taxes assessed by the County against the System, or the real property utilized for the System. Any repair or maintenance of the System will be promptly completed by or for Provider. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Systems in order to protect its rights in the Systems. Purchaser will not take a position on any tax return or in other filings suggesting that it is anything other than a purchaser of Electricity from the System and Provider shall retain title to any tax credits available under federal or state law. The parties intend this Agreement to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Internal Revenue Code. The Parties intend that neither Purchaser nor any party related to Purchaser shall acquire the right to operate any System or be deemed to operate any System for purposes of Section 7701(e)(4)(A)(i) of the Code, as amended, and the terms of this Agreement shall be construed consistently with the intention of the Parties.

- 3.2. Meter Maintenance and Testing. Provider shall install and maintain all required metering equipment, including but not limited to a utility grade kilowatt-hour ("kWh") meter for the measurement of the quantity of Electricity provided by the System. Notwithstanding the foregoing, if necessary to qualify for the "Bill Credit" described at Public Utility Code Section 2830, Purchaser may upon its sole election, assume responsibility for time of use metering costs to allow calculation of when electricity is exported to the grid.

4. PURCHASE AND DELIVERY OF ELECTRICITY.

- 4.1. Purchase Requirement. Provider will make available for sale and delivery to Purchaser all electricity generated by the System. Purchaser shall purchase and take delivery from Provider, all electricity that is generated by the System at the agreed upon price and terms described in this Agreement below, provided it is delivered at a quantity and of a quality that is compatible with Purchaser's, and PG&E's, equipment and requirements. It is acknowledged and agreed that the Provider shall not be responsible for providing any electricity to Purchaser other than the electricity produced by the System; and that, in the event that the amount of Electricity generated by the System is at any time insufficient to serve the needs of the Purchaser, the Purchaser shall obtain any shortfall electric power from the Local Utility. If the System provides more energy than is required to meet Purchaser's load, such surplus shall be exported to the grid in accordance with the provisions of Paragraph 4.5 hereof.
- 4.2. Environmental Attributes. During the Term hereof, unless Purchaser acquires the System in accordance with this Agreement, Purchaser's purchase of Electricity pursuant to this Agreement does not include any entitlement to

Environmental Attributes, tax benefits or other attributes of ownership of the System. All Environmental Attributes shall be retained by Provider, and may be used or disposed of by Provider, during the Term hereof, in its sole discretion prior to Purchaser's acquisition of the system. Purchaser shall, following its acquisition of the system pursuant to this License Agreement obtain all rights, benefits, and other attributes of ownership of the system, including entitlement to Environmental Attributes and tax benefits. For the purposes hereof, the term "Environmental Attributes" means any and all marketable environmental attributes or renewable energy credits, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags and tradable renewable credits.

- 4.3. Press Releases. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce or trade, shall submit to Provider for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Provider, which approval shall not be unreasonably withheld or delayed. Purchaser and Provider may by mutual written agreement set forth specific statements that may be used by Purchaser in any press releases that addresses Purchaser's use of solar or renewable energy.
- 4.2. Main Metering. Provider shall be responsible, at its expense, for complying with all applicable metering requirements mandated by any regulatory body on an ongoing basis. Notwithstanding the foregoing, if necessary to qualify for the "Bill Credit" described at Public Utility Code Section 2830, Purchaser may upon its sole election, and notice to provider, assume responsibility for time of use metering costs to allow calculation of when electricity is exported to the grid. System's main meter with the Local Utility will stay in the name of the Purchaser. This will be a net meter (the "Net Meter"), and will measure electricity sent back to the grid during periods that the System generates more electricity than the Purchaser is using at the time. A second meter will be installed by the Provider, between the System and the Net Meter, which will be used for billing the Purchaser for energy produced from Provider's System (the "Billing Meter"). Purchaser will furnish Provider with copies of Local Utility's bill to Purchaser for monitoring purposes as well as to get the actual rates being charged by the Local Utility for that time period. In the event that for any period Provider does not receive a copy of the bill from the Local Utility, Purchaser shall promptly make a copy of such bill available to Provider upon Provider's request.
- 4.4. Risk of Loss. As between the Parties, Provider shall be deemed to have exclusive control (and shall be responsible for any property damage or injuries

caused thereby) of the Electricity up to the point at which the System is interconnected to the Net Meter (the "Interconnection Point"), and Purchaser shall be deemed to be in exclusive control of the Electricity (and shall be responsible for any property damage or injuries caused thereby) at and after the Interconnection Point.

- 4.5. Surplus Energy Delivered to Grid. Purchaser shall be entitled to the benefits of any energy that is generated by the System in excess of Purchaser's load. Provider agrees to do all things reasonably necessary, including, but not limited to, preparing and assisting Purchaser in obtaining an interconnection, net metering, or bill credit with the Local Utility, to facilitate Purchaser's benefit from energy generated by the System which is in excess of Purchaser's need. If the interconnection agreement, net metering application, net metering agreement, or bill credit agreement is not accepted, or after acceptance is cancelled and such rejection and/or cancellation results from other than a breach or default of Purchaser of its agreement with or application to PG&E, then it is agreed that Purchaser may terminate this Agreement without fault or liability.

5. PRICE AND PAYMENT.

- 5.1. Price & Price Increases. For the first year only (which year ends at the first anniversary of the Commercial Operation Date), the rate charged will be 11.2 cents/kWh (the "Base Rate"). For each year thereafter, a new rate (the "Automatic Rate") shall be established based upon the prior year's rate. The Automatic Rate shall increase by two and one half percent (2.5%) per year on the anniversary of the Commercial Operation Date as shown on Exhibit B (e.g. the first rate adjustment would be one year from the anniversary date; the next would be 12 months later, et cetera).
- 5.2. Not a Utility. Neither Party may claim that by this Agreement, Provider is an electric utility subject to rate regulation by the California Public Utilities Commission. Provider shall not claim to be providing electric utility services to Purchaser and shall not interfere with Purchaser's ability to select an electric utility provider except that, to the extent Purchaser has a choice in selecting an electric utility provider or electricity provider, Purchaser shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales hereunder.
- 5.3. Payment. Provider shall bill Purchaser in accordance with the "Sample Bill" shown on Exhibit D for Electricity delivered to Purchaser by Provider on a monthly basis, and Purchaser shall pay such bills within thirty (30) days of the billing date thereof. In the event that Purchaser fails to pay the amount billed

by Provider within such period, Purchaser shall, in addition to all other amounts due, pay a late charge equal to one percent (1%) of the overdue amount, or the legal rate payable by a public agency, whichever is less. If payment has not been made within thirty (30) days of the billing date, Provider will provide a seven (7) day notice (the "Seven Day Notice"), and then seven days after the Seven Day Notice, a 24 hour notice (the "24 Hour Notice"). If payment has not been received 24 hours after the giving of the 24 Hour Notice Provider may terminate electrical service under this Agreement. If service is terminated for failure to make payment in a timely manner, and Purchaser later seeks re-connection, a deposit equal to two (2) months average billing may be required.

- 5.4. Adjustments to Contract Price. The Parties acknowledge that changes may occur in the utility billing procedures or rates, or the application or availability of credits, offsets, reductions, discounts or other benefits other than those directly related to the actual kWh generated. Any and all credits, reductions, discounts, historical pricing or other type of benefit made available by the applicable utility, Governmental Authority or from any other source, whether arising directly or indirectly from the System or the Electricity furnished by the System shall belong to the Purchaser.

6. OPERATIONS AND MAINTENANCE.

- 6.1. O&M Services. Provider shall be responsible for performing, or causing to be performed, all operation, repair, maintenance and monitoring services for the System during the Term, including the monitoring and maintenance of metering equipment used to determine the quantity of Electricity supplied by Provider to Purchaser pursuant to this Agreement, and for the full costs thereof. Notwithstanding the above, Purchaser reserves the right to assume Operation and Maintenance of the metering equipment if necessary to qualify for the "Bill Credit" described at Public Utilities Code section 2830. Purchaser shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the Systems for the entire Term. At all times, Provider shall promptly provide Purchaser with all information reasonably requested by Purchaser relating to the operation, use, or any other matter relating to the System, subject, however, to any confidentiality requirements or restrictions in favor of third parties.
- 6.2. Suspension of Service. Provider shall be entitled to suspend delivery of Electricity to the Premises for the purpose of conducting reasonably necessary maintenance and repair of the System and such suspension of service shall not constitute a breach of this Agreement, provided that Provider shall use commercially reasonable efforts currently employed by commercial solar

energy contractors in California to minimize any interruption in service to the Purchaser, and Provider shall notify Purchaser in writing of any scheduled outages at least 72 hours in advance of such outages.

- 6.3. Notifications of Malfunctions and Emergencies. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the System or interruption in the supply of Electricity from the System ("System Emergency"). Each Party shall designate and advise the other Party of personnel to be notified in the event of a System Emergency.
- 6.4. Correction of System Emergency. Provider shall correct, or cause to be corrected, the conditions that caused the System Emergency as soon as reasonably possible following the giving of notice to Provider by Purchaser or upon discovery of the System Emergency by Provider. If Provider fails to complete such corrections within sixty (60) days following the discovery of a System Emergency, Purchaser shall have the right, without any obligation to do so, to correct, or cause to be corrected, the conditions that caused the System Emergency, in which event Provider shall pay the cost thereof or Purchaser may deduct the same from amounts otherwise due Provider hereunder.
- 6.5. System Downtime. If a suspension of service under Paragraph 6.2 above or System Emergency caused by a failure in the System or the Provider's equipment ("System Downtime"), lasts for more than seven (7) days, then, at the next anniversary of the Commercial Operation Date, a savings analysis will be performed. If it is determined that the System Downtime caused the Purchaser to achieve less than an overall savings of five percent (5%) over what they would have paid the Local Utility without solar for the previous 12 months, the Provider will issue a credit to the Purchaser ("Downtime Credit"). The Downtime Credit will be equal to the difference between what the Purchaser paid the Local Utility during the System Downtime and what the Purchaser would have paid the Local Utility without solar.
- 6.6. Notification of Access. Provider shall take all steps necessary to ensure that its employees, its subcontractors, and invitees notify the Purchaser before accessing the Premises during the Term.

7. GENERAL COVENANTS.

- 7.1. Provider's Covenants. As a material inducement to Purchaser's execution and delivery of this Agreement, Provider covenants and agrees to the following:
 - (a) Health and Safety. Provider shall take all necessary and reasonable safety precautions in any way relating to this Agreement, and shall comply with

all applicable laws pertaining to the health and safety of persons and real and personal property used in connection with or engaged in work on the System. Provider shall have the sole and exclusive responsibility to maintain the premises in a safe condition in accordance all applicable rules, regulations and statutes currently in existence or subsequently enacted.

- (b) Security. Provider shall take reasonable measures for security and monitoring of any portion of the System located on the Premises. Such measures shall include excluding all unauthorized persons from the premises, and assuming responsibility for securing the System from theft, vandalism, or other harm.
- (c) Easement. Provider shall cooperate with any reasonable attempt by Purchaser to obtain a solar access easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System.
- (d) Notice of Damage. Provider shall promptly notify Purchaser of any matters it is aware of pertaining to any damage to or loss of the use of the System or the Premises or that could reasonably be expected to adversely affect the System or the Premises.
- (e) Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Premises or any interest therein except that Provider may grant a lien on or security interest in its rights and interests in, to and under the License Agreement as contemplated by Section 10 of the License Agreement ("Premises Liens"). If Provider breaches its obligations under this Section, it shall promptly cause such Premises Liens to be discharged and released of record without cost to Purchaser.
- (f) Maintenance of Interconnection. Provider shall ensure that all of the facilities to which electricity is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 10.
- (g) Access to Premises. Provider shall not inhibit Purchaser from exercising full rights to the Premises, and shall not deny (nor require) Purchaser full access to the System.

- (h) Third Parties. As soon as practicable, Provider shall furnish in writing to Purchaser the names of third parties engaged by Provider to perform any of the work hereunder.
- 7.2 Purchaser's Covenants. As a material inducement to Provider's execution and delivery of the Agreement, Purchaser covenants and agrees as follows:
- (a) Notice of Damage. Purchaser shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System 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 ("System Liens") caused by actions of Purchaser. If Purchaser breaches its obligations under this Section, it shall promptly cause such System Liens to be discharged and released of record without cost to Provider. Notwithstanding the foregoing, Purchaser shall not be prohibited hereby from securing obligations of Provider to Purchaser by the filing or recording of such liens.
- (c) Consents and Approvals. Purchaser shall, subject to Provider's obligation to pay the costs thereof pursuant to Paragraph 2.4 of this Agreement, obtain and maintain, and secure and deliver to Provider copies of all consents, approvals, permits, licenses, and authorizations relating to the performance of Purchaser's obligations and the rights granted by Purchaser hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Purchaser is a party or by which Purchaser is bound, including completing applications for interconnection with Purchaser's local electric utility.
- (d) Maintenance of Interconnection. Purchaser shall do all things reasonably required of it by Provider to ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 10.
- (e) Solar Easement and Access. Purchaser shall not allow any structures or flora on property it controls to block access of sunlight to the System.

- (f) Non-disturbance Agreement. Purchaser covenants that it will use commercially reasonable efforts to obtain a non-disturbance agreement ("NDA") from any third party who now has or may in the future obtain an interest in the Site, including, without limitation, any lenders to Purchaser or Purchaser's Landlord, which NDA shall (a) acknowledge and consent to the Provider's rights in the Site and System and (b) acknowledge that the third party has no interest in the System(s) and shall not gain any interest in the System(s) by virtue of the Parties' performance or breach of this Agreement or otherwise.

8. WARRANTIES.

8.1. Warranties Relating to Agreement Validity. 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 and has taken all requisite corporate or other action to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has the financial resources necessary to perform its obligations under this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (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 would affect its ability to carry out the transactions contemplated herein;
- (f) Purchaser represents and warrants that it has not entered into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by Provider under this Agreement, except for Purchaser's agreements with its Local Utility.

- 8.2. Requisite Standards. The System shall be installed with due care by qualified employees, representatives, agents or contractors of Provider and shall conform to applicable industry standards and practices, applicable law, including prevailing wage laws if applicable, and Purchaser's leases for the Premises (if any).
9. TAXES AND GOVERNMENTAL FEES. 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 Electricity to Purchaser (other than income taxes imposed upon Provider). Notwithstanding the foregoing, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property, including in lieu taxes in accordance with R&T Code 107.6, or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. If a tax is imposed upon Purchaser related to the improvement of real property by the existence of the System on the Premises, Provider shall promptly reimburse Purchaser for such tax, and in no event shall reimbursement take longer than 30 days from any legitimate request for reimbursement. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.
10. FORCE MAJEURE.
- 10.1. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter (subject to Provider's right to decline replacement of the System in Section 10.2). For the purposes hereof, a “Force Majeure Event” means any of the following events to the extent not caused by the Party claiming a Force Majeure Event or its agents or employees: (a) war, riot, acts of a public enemy, insurrection, acts of terrorism, or civil disturbance; (b) acts of God, including but not limited to storms, flood, lightning, earthquake, hailstorms, ice storms, tornados, hurricanes, landslides, fires (whether deliberately set or otherwise), sabotage and destruction caused by a third party (other than a contractor retained by either Party); and (c) strikes, walkouts, lockouts or similar labor actions or disputes.

10.2. Termination in Consequence of Force Majeure Event. If the System is substantially damaged or destroyed by a Force Majeure Event, it may be replaced by Provider at Provider's election and upon commencement of operation of the replacement System all terms and conditions of this Agreement shall remain in effect, including the remaining Term of this Agreement. Alternatively, if the System is substantially damaged or destroyed by a Force Majeure Event, Provider may terminate this Agreement without fault or liability. In the event of early termination as a result of a force majeure event, the provisions of paragraph 1.3 shall govern removal of the system. To the extent Provider does not terminate this Agreement following substantial damage or destruction of the System as a result of a Force Majeure Event, the Expiration Date shall be extended day for day commensurate with the period during which any Force Majeure Event prevents ordinary operation of the System.

11. DEFAULT.

11.1. Provider Defaults and Purchaser Remedies.

- (a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):
- (i) Provider (A) commences a voluntary case under any bankruptcy law; (B) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Provider in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against Provider remains undismissed or undischarged for a period of sixty (60) days; and
 - (ii) Provider breaches any material term of this Agreement and (A) if such breach is capable of being cured within thirty (30) days after Purchaser's notice of such breach, Provider has failed to cure the breach within such thirty (30) day period, or (B) if Provider has diligently commenced work to cure such breach during such thirty (30) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Purchaser's notice, Provider has failed to cure the breach within such ninety (90) day period;
- (b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a)(i) has occurred and is not timely cured, Purchaser may terminate this Agreement upon at least fifteen (15) days' prior written notice to Provider. If a Provider Default described in Section 11.1(a)(ii)

has occurred and is continuing, Purchaser may terminate this Agreement immediately upon the expiration of the respective grace periods set forth in such provisions. In the event of Provider Default, Purchaser may exercise any other remedy it may have at law or equity or under this Agreement. Following the occurrence of a Provider Default, Purchaser shall use commercially reasonable efforts to mitigate Purchaser's damages.

11.2. Purchaser Defaults and Provider Remedies.

- (a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):
- (i) Purchaser (A) commences a voluntary case under any bankruptcy law; (B) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Purchaser in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against Purchaser remains undismissed or undischarged for a period of sixty (60) days;
 - (ii) Purchaser breaches any material term of this Agreement, and (A) if such breach is capable of being cured within thirty (30) days after Provider's notice of such breach, Purchaser has failed to cure the breach within such thirty (30) day period, or (B) if Purchaser has diligently commenced work to cure such breach during such thirty (30) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Provider's notice, Purchaser has failed to cure the breach within such ninety (90) day period; and
- (b) Provider's Remedies. If a Purchaser Default described in Section 11.2(a)(i) has occurred, this Agreement shall terminate immediately. If a Purchaser Default described in Section 11.2(a)(ii) has occurred and is not timely cured, Provider may terminate this Agreement immediately. In the event of Purchaser Default, Provider may exercise any other remedy it may have at law or equity or under this Agreement.

Following the occurrence of a Purchaser Default, Provider shall use commercially reasonable power to mitigate Purchaser's damages.

12. DISPUTE RESOLUTION.

12.1. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. In the event that the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party. Such arbitration shall be conducted in conformance with the provisions set forth below.

12.2. ARBITRATION

12.2.1. THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT TO COMMENCE LEGAL ACTION OR ARBITRATION OTHER THAN AS PROVIDED UNDER THE TERMS OF THIS AGREEMENT, AND THIS AGREEMENT SHALL PROVIDE THE SOLE AND EXCLUSIVE REMEDY FOR RESOLUTION OF DISPUTES.

12.2.2. THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATION OR FUNCTION OF THE ARBITRATOR IN ANY MANNER OR FASHION.

12.2.3. APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE NOTICE OF OBJECTION OR DISPUTE, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF YUBA.

12.2.4. THE ARBITRATOR'S FEES AND FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR UPON

RENDERING ITS AWARD SHALL DETERMINE THE PARTY THAT PREVAILED BASED UPON WRITTEN STATEMENTS MADE BY EACH PARTY AT THE COMMENCEMENT OF THE ARBITRATION AS TO THE POSITION OF THE PARTIES AND THEIR ALTERNATIVES FOR SETTling THE MATTER. A STATEMENT OF A PROPOSED SETTLEMENT SHALL NOT BE BINDING UPON ANY PARTY AND SHALL NOT BE CONSIDERED AS EVIDENCE BY THE ARBITRATOR EXCEPT TO THE EXTENT THAT THE ARBITRATOR UPON MAKING ITS SOLE AND INDEPENDENT DETERMINATION SHALL DETERMINE THE PARTY WHICH PREVAILED BASED UPON THE PROPOSALS FOR SETTLEMENT OF THE MATTER MADE BY EACH PARTY AND SHALL DETERMINE THAT THE NON-PREVAILING PARTY SHALL PAY SOME OR ALL OF THE COSTS OF ARBITRATION INCLUDING ANY COSTS INCURRED BY THE ARBITRATOR AND IN EMPLOYING EXPERTS TO ADVISE THE ARBITRATOR IN REGARD TO SPECIFIC SUBJECTS OR QUESTIONS. THE ARBITRATOR MAY FURTHER AWARD THE COST OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY IF, IN THE ARBITRATOR'S DETERMINATION, THE POSITION OF THE NON-PREVAILING PARTY WAS NOT REASONABLY TAKEN OR MAINTAINED OR WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.

12.2.5. THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE RULINGS OF THE ARBITRATOR SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL (A) SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTY SHALL LAPSE BY THEIR TERMS, (B) THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT, OR (C) THE ARBITRATOR SHALL MODIFY THOSE TERMS.

13. LIMITATION OF LIABILITY. Except as otherwise provided neither party shall be liable to the other party or its indemnified persons for any special, punitive, exemplary, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

14. ASSIGNMENT.

14.1. Provider's Rights.

- (a) Purchaser acknowledges that Provider may finance the acquisition and installation of the System through a loan or lease from one or more financial institutions and that Provider's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement. In order to facilitate any such transaction, and with respect to any such financial institutions of which Provider has notified Purchaser in writing (each, a "Lender"), Purchaser consents to the assignment by Provider to the Lender of the Provider's right, title and interest in and to this Agreement on the express condition that any such assignee shall agree in writing to be bound by the terms of this Agreement and to obtain all required third party consents. Purchaser further consents to the Assignment of this Agreement to an affiliate of Provider for the purpose of financing the System.
- (b) Provider retains the right to assign this Agreement to another qualified financially responsible party upon the approval of the Purchaser, which approval shall not to be unreasonably withheld upon the express condition that any such assignee shall agree in writing to be bound by the terms of this Agreement and to obtain all required third party consents. All terms and conditions will stay intact with this Assignment.

14.2. Purchaser's Rights. Purchaser may assign its rights and interests in and to this Agreement to any successor owner or Person lawfully occupying the Premises, provided that the written consent of the Provider to any such assignment, which shall not be unreasonably withheld, shall have been obtained, and further provided that any such assignee shall agree in writing to be bound by the terms of this Agreement and all required third party consents are obtained.

15. CONFIDENTIALITY. If either Party provides confidential information, including, without limitation, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities 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. A Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, investors, potential lenders, potential investors and potential

assignees of this Agreement (provided and on condition that such potential lenders, potential investors and potential assignees agree in writing to be bound by the terms of this Section 15), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement, the financing of the System or the sale of any interest in Provider.

- 15.1. The Party receiving Confidential Information shall be permitted to disclose Confidential Information required to be disclosed by it or its affiliates pursuant to the California Public Records Act, or any other applicable law or regulation, a subpoena or order of a court, or for evidentiary purposes in any relevant action, proceeding or arbitration to which the receiving Party or any of its partners, officers, directors, shareholders or affiliates is a party. Notwithstanding any other provision to the contrary, if the receiving Party receives a request to disclose any Confidential Information under the Public Records Act, subpoena, order or otherwise, the Party receiving the request shall, to the extent permitted by applicable law: (a) promptly notify the other Party thereof, (b) consult with the other Party on the advisability of taking steps to resist or narrow such request, and (c) if disclosure is required, reasonably cooperate with the other Party in any attempt that it may make to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information; provided, however, that such reasonable cooperation shall be at the sole cost of the Party wishing to prevent or limit disclosure of the Confidential Information.
16. INDEMNIFICATION. Each Party agrees that it shall indemnify and hold harmless the other, its permitted successors and assigns and their respective directors, officers, members, shareholders, volunteers and employees (collectively, the "Indemnified Parties") from and against any and all Losses incurred by the Indemnified Parties to the extent arising from or out of the following: any claim for or arising out of any injury to or death of any person or loss or damage to property of any person due to the acts or omissions of the Indemnifying Party; provided, however, that nothing in this Section 16 is intended to modify the limitation of Purchaser's liability set forth in Section 13 above. The Parties shall not, however, be required to reimburse or indemnify any Indemnified Party for any Loss to the extent such Loss is due to the gross negligence or willful misconduct of any Indemnified Party. For the purposes hereof, the term "Loss" means any claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs and expenses (including without limitation reasonable attorney's fees).
17. INSURANCE. Purchaser and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, joint powers agency memorandum, or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time

required under applicable federal and state law, and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. Each Party shall, within ten (10) days of written request, furnish current certificates of insurance evidencing the required insurance, and such policies shall include the other Party.

18. NOTICES. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Provider's and Purchaser's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Purchaser

President
General Manager
Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961
Telephone: (530) 530-743-0317
Facsimile: (530) 743-3023

If to Provider:

Olivehurst Solar 2, LLC
12970 Earhart Avenue
Suite 110
Auburn, CA 95602
Telephone: (530) 887-1984
Facsimile: (530) 887-1986

19. MISCELLANEOUS.

19.1. Integration; Exhibits. This Agreement, together with any Exhibits and Schedules attached hereto and the License Agreement, constitutes the entire agreement and understanding between Provider and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Parties acknowledge that the Provider will enter into the License Agreement contemporaneously with this Agreement.

19.2. Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the solar photovoltaic power generation industry in the relevant market 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.

- 19.3. Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 19.4. Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 19.5. Changes and Modifications to the Agreement. Any modification, alteration or change to this Agreement shall be made only by written amendments executed by the parties.
- 19.6. Governing Law Provision. The validity of the Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of California. This agreement shall be deemed to have been entered in the County of Yuba, State of California.
- 19.7. Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.
- 19.8. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective permitted successors and assigns.
- 19.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which may be delivered by facsimile transmission or electronically in .PDF format and each of which shall be an original but all of which together will constitute one instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart.
- 19.10. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying

to such requesting party, or any other person, firm or corporation specified by such requesting party:

- (a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- (c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[Signature page follows]

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 date signed below.

Olivehurst Solar 2, LLC

Olivehurst Public Utility District

By: _____

By: _____

Date: _____

Date: _____

Name: David W. Dwelle, Manager

Name: Gary Bradford

Phone Number: (530) 887-1984

President of the Board

EXHIBIT A

EXHIBIT C

PPA Rate

OPUD RES-BCT PPA rate	
PPA year 1 rate	\$0.112
PPA Escalator	2.50%
Year	PPA Rate
1	\$0.1120
2	\$0.1148
3	\$0.1177
4	\$0.1206
5	\$0.1236
6	\$0.1267
7	\$0.1299
8	\$0.1331
9	\$0.1365
10	\$0.1399
11	\$0.1434
12	\$0.1470
13	\$0.1506
14	\$0.1544
15	\$0.1583
16	\$0.1622
17	\$0.1663
18	\$0.1704
19	\$0.1747
20	\$0.1790

EXHIBIT D

Sample Electric Bills

As per the Terms of the PPA, these rates will increase annually on the anniversary of the Commercial Operation Date.



“RESOLUTION NO. 2285 EXHIBIT A”

Memorandum of Understanding

July 17, 2014

Tim Shaw
General Manager
Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961

Dear Tim:

Thank you for the opportunity to submit this memorandum of understanding (“MOU”). This MOU confirms our mutual intentions with respect to the transaction described herein between Olivehurst Public Utility District. (“Buyer”) and Pacific Power Renewables Inc. (“Seller”; and, together with Buyer, each, a “Party” and together, the “Parties”).

1. Scope of Transaction:

- a. Seller intends to develop, own and operate, at its own expense, a solar generating facility located at the Buyer’s facility and defined in Exhibit A of the PPA.
- b. Buyer will enter into a power purchase agreement (“PPA”) and site license agreement (“SLA”) with Seller.
- c. Seller will begin design, engineering and construction after being issued a notice to proceed from the Buyer.

2. Consideration: Seller intends to sell energy at the rates defined in the July 17, 2014 proposal for a 20 year period beginning on the commercial operation date and defined in Exhibit A.

3. Due Diligence: It is understood that both parties have some level of due diligence to complete prior to the start of construction and either may cancel the PPA and SLA per the terms set forth in 7a and 7b of this MOU and within the terms of the PPA and SLA.

4. Definitive Purchase Agreement: All of the terms and conditions of the proposed transaction are stated in the PPA and SLA.

5. **Governing Law:** This MOU shall be governed by the substantive laws of the State of California without regard to conflict of law principles. This MOU in conjunction with the PPA and SLA constitutes the entire understanding and agreement between the Parties hereto and their affiliates with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of such Parties (whether oral or written).
6. **Expenses:** In the spirit of a “no upfront cost” proposal to the Buyer, Seller agrees to reimburse the Buyer for legal review fees up to \$5,000, provided that the Project moves to construction. All costs associated with existing land use feasibility and establishing a trust fund to mitigate cost of new land acquisition for future park use will be incurred by Buyer.
7. **Cancellation:** Either Party may cancel the PPA and Site Lease Agreement with 30 days prior notice if one of the following conditions exist:
 - a. If the Buyer is unsuccessful in their efforts to secure the appropriate land use, they may cancel the PPA and Site License agreement with written notice providing that it precedes the notice to proceed issued to the Seller.
 - a. Once Seller has fully determined the scope of works and found that the cost of construction, the cost of interconnection, a change in government subsidies, rebates or tax credits, or a reduced scope makes the Project cost prohibitive at the agreed upon PPA pricing, Seller may cancel per the terms of the PPA and SLA.

If the foregoing terms and conditions are acceptable to you, please so indicate by initialing each page and signing the enclosed copy of this MOU and returning it to the attention of the undersigned.

Sincerely,

[Seller]

Pacific Power Renewables, Inc.
12970 Earhart Ave.
Auburn, CA 95602

By: _____

Title: _____

ACCEPTED AND AGREED

[Buyer]

Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961

By: _____

Title: _____

DRAFT

“RESOLUTION NO. 2285 EXHIBIT B”

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Olivehurst Solar 2, LLC
12970 Earhart Avenue, Suite 110
Auburn, CA 95602

SITE ACCESS AND LICENSE AGREEMENT

THIS SITE ACCESS AND LICENSE AGREEMENT (this “Agreement”), is made and entered into as of September 20, 2011 by Olivehurst Public Utility District (“**Grantor**”) and Olivehurst Solar 2, LLC (“**Grantee**”) with reference to the following recitals.

RECITALS

A. Grantor and Grantee have entered into a Solar Power Purchase Agreement (the “**PPA**”), pursuant to which Grantor has agreed to purchase electric energy generated from Grantee’s solar energy system (the “**System**”) to be located on a portion of Grantor’s Premises (as defined in Section 1 below) (the portion of Grantor’s Premises upon which the System is situated is defined herein as the “**Site**”), and accordingly Grantee agreed to install, own, operate and maintain the System and supply to Grantor such electric energy. The PPA is expressly conditioned on completion of environmental review as described in the PPA.

B. Upon occurrence of the conditions precedent described in the PPA, Grantor shall award Grantee the following rights: To permit Grantee to install, own, operate and maintain the System as contemplated by the PPA, Grantor will grant to Grantee the right and license to enter upon and cross the Premises and the improvements thereon and appurtenances thereto, all to such extent and such times as shall be reasonably necessary for Grantee to design, construct, install, test and commission the System, to interconnect the System to the local electric utility, to operate, maintain and repair the System and to dismantle and remove the System.

C. Capitalized terms used and not defined herein have the meaning given them in the PPA.

NOW, THEREFORE, upon the occurrence of the conditions precedent described in the PPA, Grantor (for itself and its successors and assigns and any person or entity claiming through it) and Grantee agree as follows:

AGREEMENT

1. Access Rights. Grantor hereby grants to Grantee the right and license to enter upon and cross the property described in Exhibit A to this Agreement (the “**Property**”) and the improvements thereon and appurtenances thereto (collectively, the “**Premises**”), all to such extent and such times as shall be reasonably necessary for Grantee to inspect the suitability of the Premises for the System, to design, construct, install, test and commission the System, to interconnect the System to the local electric utility, to operate, maintain and repair the System, to clean, replace and dispose of part or all of the System, and to dismantle and remove the System. Grantor also grants to Grantee a right of way to access the Premises across or through any surrounding or nearby premises owned or leased by Grantor passage through which is necessary or convenient to gain access to the System or the Premises. All of the rights and license described in this Section 1 shall be in effect from the date of this Agreement and until the date on which the System is completely removed from the Premises or sold to Grantor as contemplated by the PPA. **Grantor agrees that the rights and license granted herein shall run with the Property and survive any conveyance or transfer thereof. Notwithstanding the foregoing, Grantor may terminate this agreement at any time, upon ten days notice, until completion of the CEQA documentation described in the PPA.**

2. License Fee. Grantee hereby covenants to pay Grantor, \$100/acre annually as compensation for the fair market value of the rights and license granted to Grantee hereunder for the entire Term of the PPA.

3. System Construction and Operation. Grantor hereby agrees that Grantee shall have the right from time to time during the term hereof to access the premises, subject to the rights and obligations set forth in the Power Purchase Agreement: (i) to install and operate the System(s) (including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections) on the Site; (ii) to maintain, clean, repair, replace and dispose of part or all of any System; (iii) to add or remove any System or any part thereof; (iv) to access the Premises with guests for promotional purposes during normal business hours and at other times as are acceptable to the Grantor pursuant to the terms of the PPA; and (v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Grantee, to carry out the activities set forth in this Section 3. Grantor acknowledges that the installation of all or a portion of the System may require physically mounting the System to the ground (provided that no mounting or adhering of functional components of the System, including, without limitation, photovoltaic panels and inverters, shall be permanent and at all times such components shall be removable personal property of Grantee). Grantee may request written acknowledgement from Grantor pertaining to the final structural analysis of the Site related to the System.

4. Grantee's Access to Premises. Grantor shall provide Grantee a reasonable area for construction laydown and shall provide necessary space for storing parts and supplies. Notwithstanding anything to the contrary in this Agreement, Grantee shall be permitted to access the Premises twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by Grantee. Within twenty-four (24) hours of such emergency access, Grantee shall provide Grantor with a written explanation of the nature of the emergency. Non-emergency access shall be limited to normal business hours (i.e., Monday through Friday, excluding holidays, between the hours of 7:00 am. and 7:00 p.m.).

5. Representations and Warranties, Covenants of Grantor and Grantee. Grantor represents and warrants or covenants to Grantee that:

(a) Grantor covenants that there are no mortgages, liens, or activities that may adversely affect the System's exposure to sunlight on the Property and the Premises. Grantor covenants that Grantor has lawful title to the Property and the Premises and full right to enter into this Agreement and that Grantee shall have quiet and peaceful possession of the Premises throughout the term of this Agreement. Grantor will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the System or its function. Grantor will not conduct maintenance to the Property or the Premises that is reasonably likely to damage, impair or otherwise adversely affect the System or its function.

(b) Grantor covenants that it will use commercially reasonable efforts to obtain a non-disturbance agreement ("NDA") from any third party who now has or may in the future obtain an interest in the Site, including, without limitation, any lenders to Grantor, Grantor's Landlord or the owner of the Site, which NDA shall (a) acknowledge and consent to the Grantee's rights in the Site and (b) acknowledge that the third party has no interest in the System(s) and shall not gain any interest in the System(s) by virtue of the Parties' performance or breach of this Agreement.

(c) Grantor is not presently aware of any substances, chemicals or wastes, identified as hazardous, toxic or dangerous materials under any applicable law or regulation, present on, in or under the Premises in violation of any applicable law or regulation. Neither Grantor nor Grantee shall introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Grantor or Grantee becomes aware of any such hazardous, toxic or dangerous materials, each party shall promptly notify the other in writing of the type and location of such materials. Grantor agrees to assume full responsibility for (and protect, indemnify and defend Grantee against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws directly caused by Grantor related to the Premises, unless directly attributable to the actions of Grantee. Grantee agrees to assume full responsibility for (and protect, indemnify and defend Grantor

against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws directly caused by Grantee related to the Premises, unless directly attributable to the actions of Grantee.

(d) Grantor acknowledges and agrees that access to sunlight (“insolation”) is essential to the value to Grantee of the interest granted hereunder and is a material inducement to Grantee in entering into this Agreement. Accordingly, Grantor shall not permit any interference with insolation on and at the Site which is in its direct power to control. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Grantee would be irreparably harmed by a breach of the provisions of this Section 5(d), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Grantee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 5(d).

(e) To the extent that the following might affect the value, operation, utility or use of the System(s), Grantor shall keep areas of the Site that are under its control neat, clean and in good order and condition. Grantor shall give Grantee prompt notice of any damage to or defective condition in any part or appurtenance of the Site (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Site). Grantor shall exercise reasonable care to keep and make the Site safe and to warn those lawfully on the Site of existing dangers.

6. Term. The term of this Agreement shall commence upon the occurrence of the conditions precedent outlined in the PPA, and terminate on the date that is 180 days after the termination or expiration of the PPA, or removal of the system pursuant to the terms of the PPA, whichever occurs sooner.

7. Casualty or Condemnation. In the event the Site shall be so damaged or destroyed so as to make the use of the Site impractical as determined by a qualified engineering consultant retained by Grantor and reasonably acceptable to Grantee, then either Party may elect to terminate this Agreement on not less than twenty (20) days’ prior notice to the other Party effective as of a date specified in such notice, and on the date so specified, this Agreement shall expire as fully as if such date were the date set forth above for the expiration this Agreement. If neither Party elects to terminate this Agreement pursuant to the previous sentence, Grantor shall exercise commercially reasonable efforts to repair the damage to the Site and return the Site to its condition prior to such damage or destruction, and except that Grantor shall in no event be required to repair, replace or restore any property of Grantee comprising part of the System, which replacement or restoration shall be Grantee’s responsibility. Grantee shall be entitled to all proceeds from any award related to eminent domain or condemnation of all or part of the System, as well as any damages suffered thereby.

8. Indemnity.

(a) Grantee Indemnity. Grantee shall indemnify, defend and hold harmless Grantor, its affiliates, officers, agents and employees (the "Grantor Indemnitees") from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Grantee or Grantor, and damage or destruction of property, including, but not limited to, property of Grantee, any utility company or Grantor, or other loss or damage incurred by Grantor, arising out of or due to the acts or omissions of the Grantee. The obligation to indemnify shall extend to and encompass all costs incurred by Grantor and any Grantor Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Grantee's obligations pursuant to this Section 8(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the active negligence or willful misconduct of Grantor, the Grantor Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties. Grantee shall pay any cost that may be incurred by Grantor or the Grantor Indemnitees in enforcing this indemnity, including reasonable attorney fees. Grantee represents, warrants and covenants that Grantor shall have no liability for any past, present or future contamination or pollution, or breach of environmental laws (herein "Environmental Laws"), if any, located on or relating to the Premises, that are directly attributable to the actions of Grantee. Grantee agrees to assume full responsibility for (and protect, indemnify, defend and hold harmless Grantor against) any liability or cleanup obligations for any Environmental Claims that are directly attributable to the actions of Grantee.

(b) Grantor Indemnity. Grantor shall indemnify, defend and hold harmless Grantee, its affiliates, officers, agents and employees (the "Grantee Indemnitees") from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Grantee or Grantor, and damage or destruction of property, including, but not limited to, property of either Grantee or Grantor, or other loss or damage incurred by Grantee, arising out of due to the acts or omissions of the Grantor. The obligation to indemnify shall extend to and encompass all costs incurred by Grantee and any Grantee Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Grantor's obligations pursuant to this Section 8(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Grantee, the Grantee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties. Grantor shall pay any cost that may be incurred by Grantee or the Grantee Indemnitees in enforcing this indemnity, including reasonable attorney fees. Grantor represents, warrants and covenants that Grantee shall have no liability for any past, present or future contamination or pollution, or breach of Environmental Laws, if any, located on or relating to the Premises, unless directly

attributable to the actions of Grantee. Grantor agrees to assume full responsibility for (and protect, indemnify, defend and hold harmless Grantee against) any liability or cleanup obligations for any Environmental Claims, unless directly attributable to the actions of Grantee. Grantor represents, warrants and covenants that it shall not permit any lien, claim, right or other encumbrance to attach to the System and agrees to discharge any lien, claim, encumbrance or interest that attaches to the System (other than liens claims, encumbrances or interests placed on the System by Grantee or Grantee's creditors).

9. No Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, neither Grantee nor Grantor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Grantee or Grantor from seeking and obtaining general contract damages for a breach of this Agreement.

10. Assignment. Grantor and Grantee agree that the provisions related to assignment of the PPA set forth in the PPA shall also apply to this Agreement. In addition, if Grantee assigns its rights under this Agreement and/or under the PPA to any party providing financing with respect to the System (including a lease financing) (or any representative or agent thereof) (a “**Lender**”), Grantor acknowledges and agrees that, upon receipt of written direction by a Lender, and notwithstanding any instructions to the contrary from Grantee, Grantor will recognize Lender, or any third party to whom Lender has reassigned the rights of Grantee under this Agreement and/or under the PPA, as the proper and lawful successor to Grantee with respect to access to the Premises across or through the Property and fully entitled to receive the rights and benefits of Grantee hereunder and under the PPA so long as Lender (or its assignee) performs the obligations of Grantee hereunder. Grantor shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Grantor shall in good faith believe (a) to be genuine and (b) a copy of which to have been delivered to Grantee. Grantor shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. No assignment by Grantee shall encumber the System or the premises past the Term of the PPA, and shall be subject to all rights of Grantor to a transfer of the System, and all rights of the assignee shall terminate upon such transfer without obligation of Grantor.

11. Further Assurances. Upon the receipt of a written request from the other party, each party shall execute such additional documents (e.g., PPA and utility interconnection agreement), instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, provided that Grantor shall not be obligated to incur any costs or obligations as a result thereof. Neither party shall unreasonably withhold, condition or delay its compliance

with any reasonable request made pursuant to this section. Grantor consents to recording a memorandum of this Agreement in the land registry or title records of the county where the Premises are located or other applicable government office.

12. Amendments. This Agreement may be amended only in writing signed by Grantee and Grantor or their respective successors in interest.

13. Notices. Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 13). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below:

If to Grantor:

Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961

If to Grantee:

Olivehurst Solar 2, LLC
12970 Earhart Avenue
Suite 110
Auburn, CA 95602

14. Waiver. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

15. Remedies Cumulative. No remedy herein conferred upon or reserved to Grantee or Grantor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Grantor hereby agrees that it shall not have the right to terminate this Agreement at any time unless it also has the right at such time to terminate the PPA.

16. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California.

17. Dispute Resolution. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute") within thirty

(30) days after the date that a Party gives written notice of such Dispute to the other Party. In the event that the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party. Such arbitration shall be conducted in conformance with the provisions set forth below.

(a) **Arbitration.** THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT TO COMMENCE LEGAL ACTION OR ARBITRATION OTHER THAN AS PROVIDED UNDER THE TERMS OF THIS AGREEMENT, AND THIS AGREEMENT SHALL PROVIDE THE SOLE AND EXCLUSIVE REMEDY FOR RESOLUTION OF DISPUTES.

(i) THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATION OR FUNCTION OF THE ARBITRATOR IN ANY MANNER OR FASHION.

(ii) APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE NOTICE OF OBJECTION OR DISPUTE, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF YUBA.

(iii) THE ARBITRATOR'S FEES AND FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR UPON RENDERING ITS AWARD SHALL DETERMINE THE PARTY THAT PREVAILED BASED UPON WRITTEN STATEMENTS MADE BY EACH PARTY AT THE COMMENCEMENT OF THE ARBITRATION AS TO THE POSITION OF THE PARTIES AND THEIR ALTERNATIVES FOR SETTLING THE MATTER. A STATEMENT OF A PROPOSED SETTLEMENT SHALL NOT BE BINDING UPON ANY PARTY AND SHALL NOT BE CONSIDERED AS EVIDENCE BY THE ARBITRATOR EXCEPT TO THE EXTENT THAT THE ARBITRATOR UPON MAKING ITS SOLE AND INDEPENDENT DETERMINATION SHALL DETERMINE THE PARTY WHICH PREVAILED BASED UPON THE PROPOSALS FOR SETTLEMENT OF THE MATTER MADE BY EACH

PARTY AND SHALL DETERMINE THAT THE NON-PREVAILING PARTY SHALL PAY SOME OR ALL OF THE COSTS OF ARBITRATION INCLUDING ANY COSTS INCURRED BY THE ARBITRATOR AND IN EMPLOYING EXPERTS TO ADVISE THE ARBITRATOR IN REGARD TO SPECIFIC SUBJECTS OR QUESTIONS. THE ARBITRATOR MAY FURTHER AWARD THE COST OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY IF, IN THE ARBITRATOR'S DETERMINATION, THE POSITION OF THE NON-PREVAILING PARTY WAS NOT REASONABLY TAKEN OR MAINTAINED OR WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.

THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE RULINGS OF THE ARBITRATOR SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL (A) SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTY SHALL LAPSE BY THEIR TERMS, (B) THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT, OR (C) THE ARBITRATOR SHALL MODIFY THOSE TERMS.

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

19. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the parties.

20. Entire Agreement. This Agreement (along with the PPA) represents the full and complete agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said parties with respect to said subject matter.

21. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

(a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year signed below.

Olivehurst Solar 2, LLC

Olivehurst Public Utility District

By: _____

By: _____

Date: _____

Date: _____

Name: David W. Dwelle,
Title: Authorized Signatory

Name: ~~Ronald W. Dougherty~~ Gary Bradford
Title: President of the Board

EXHIBIT A

Legal Description of the Property

~~3908 Mary Ave., Olivehurst, CA 95961~~

APN: _____