

**SAN YSIDRO SCHOOL DISTRICT  
GOVERNING BOARD AGENDA**

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**TO:** Governing Board

**BOARD MEETING DATE:** March 26, 2015

**FROM:** Edward Velasquez  
Interim Superintendent

**SCHOOL/DEPARTMENT:** Business Services 

**AGENDA ITEM:** RESOLUTION #14/15-3111  
SUPPLEMENTARY RETIREMENT PLAN 2014-15  
PUBLIC AGENCY RETIREMENT SERVICES (PAR)

**BACKGROUND INFORMATION:**

The San Ysidro School District has agreed to offer a Supplementary Retirement Plan to eligible employees as described in Resolution No. 14/15-3111. The purpose of this plan is to reduce expenditures and avoid layoffs. The Contract Administrator for the program shall be Public Agency Retirement Services (PARS). An orientation meeting and workshop will be offered for eligible employees.

**COST IMPLICATIONS:**

The cost will be offset by the savings on replacement staff.

**RECOMMENDATION:**

Approve Resolution #14/15-3111 to offer a supplementary retirement plan to eligible employees.

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Renewal Contract/Item

New Contract/Item

Financial Implications?

Yes  No

Are funds for this item included in the 2014-2015 Budget?

Yes  No

Requisition # from PeopleSoft:

(Amount)

**General Fund**  
*(Refer to Cost Implications above)*

(Name of funding source and/or location)

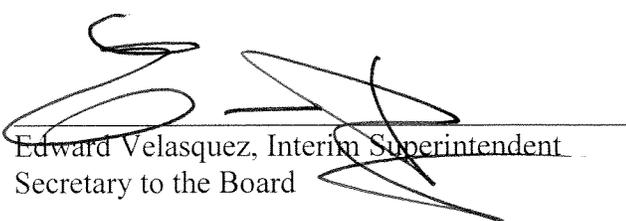
03-00-0000-000-0000-9100-7439-000-080

(Funding account number)

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Recommended for:  Approval  Denial      Certification Requested  Yes  No

**Superintendent's Office Certification:**

  
Edward Velasquez, Interim Superintendent  
Secretary to the Board

SAN YSIDRO SCHOOL DISTRICT  
SAN DIEGO COUNTY, CALIFORNIA

**BOARD RESOLUTION #14/15-3111**

**2014-15 SUPPLEMENTARY RETIREMENT PLAN**

**WHEREAS** it is determined to be in the best fiscal interest of the San Ysidro School District and its employees to provide a retirement incentive offer to eligible employees who wish to voluntarily exercise their option to separate from District Service;

**WHEREAS** there is no cash option available to employees in lieu of this retirement incentive offer;

**WHEREAS** Public Agency Retirement Services (PARS) has made available to the District a Supplementary Retirement Plan, a retirement incentive program supplementing STRS/PERS, and qualifying under the relevant sections of Section 403(b) of the Internal Revenue Code;

**WHEREAS** the District, pursuant to applicable policy and/or a collective bargaining agreement, desires to adopt the Supplementary Retirement Plan and to fund the incentive through nonelective employer, post-employment contributions to the PARS designated 403(b) provider.

**NOW THEREFORE, BE IT RESOLVED THAT:**

1. The Governing Board of the District hereby adopts the PARS Supplementary Retirement Plan, as part of the District Retirement Program, effective March 27, 2015; and
2. The retirement incentive must meet the District's fiscal and operational objectives in order for the plan to go into effect. If these goals are not reached, the District may withdraw the retirement incentive. If the District withdraws the retirement incentive, resignations may be rescinded; and
3. The Governing Board of the District hereby appoints the Assistant Superintendent of Business Services, or his/her successor or his/her designee as the District's Plan Administrator; and
4. The District's PARS Plan Administrator is hereby authorized to execute the contracts, custodial agreement facilitating the payment of contributions to the 403(b) arrangement, and other legal documents related to a trust or the plan on behalf of the District and to take whatever additional actions are necessary to maintain the District's participation in the plan and to maintain compliance of any relevant regulations issued.

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO )

Rodolfo Linares, the Clerk of the Governing Board of the San Ysidro School District of San Diego County, California, hereby certifies that the above foregoing resolution was duly and regularly adopted by said District at a special board meeting thereof held on March 26, 2015, and passed by a \_\_\_\_\_ vote of said Board.

IN WITNESS WHEREOF I have hereunto set my hand and seal this March 26, 2015.

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Clerk of the Board

**SAN YSIDRO SCHOOL DISTRICT  
GOVERNING BOARD AGENDA**

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**TO:** Governing Board

**BOARD MEETING DATE:** March 26, 2015

**FROM:** Edward Velasquez  
Interim Superintendent

**SCHOOL/DEPARTMENT:** Administration

**AGENDA ITEM:** AGREEMENT WITH PRINCIPAL'S EXCHANGE

**BACKGROUND INFORMATION:**

Principal's Exchange conducts a comprehensive achievement audit which includes a complete study of the district's achievement profile to identify strengths existing within the school system and barriers to accelerated improvement.

Activities include:

- Data Analysis
- Focus Groups
- Interviews
- Classroom Visits
- Student Shadowing

Deliverables:

- Complete written report, with data and narrative
- Oral report to key staff
- Collaboration with district leaders to consider implications of findings on action plans

Other services included in agreement: LCAP Revision to approve by June 2015 and Website Development.

**COST IMPLICATIONS:**

\$75,000 Consulting Fees (include Materials/Copies costs)

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Renewal     New     Amendment     Ratification

**Business Services Reviewed** \_\_\_\_\_

Financial Implications?

Yes     No

Are funds for this item included in the 2014-2015 Budget?

Yes     No

Requisition # from PeopleSoft:

Approximate cost

\$ 75,000

(Amount)

General Fund

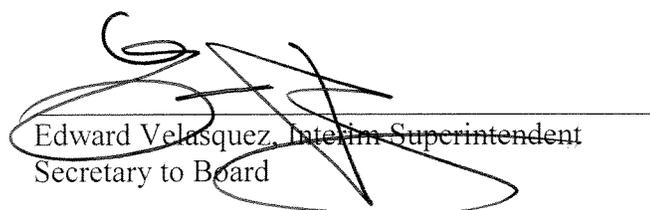
(Name of funding source and/or location)

(Funding account number)

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Recommended for:     Approval     Denial    Certification Requested     Yes     No

**Superintendent's Office Certification:**

  
Edward Velasquez, Interim Superintendent  
Secretary to Board

# SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

## PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into this 26 day of March, 2015, by and between the San Ysidro School District, hereinafter called the "District", and

<b>Principal's Exchange</b>	<b>626 824 5199</b>
Company/Consultant	Phone Number
2101 E. Fourth St. Santa Ana, CA 92705-3835	robin@principals-exchange.org
Mailing Address	City State Zip Code Email

hereinafter referred to as "Consultant."

**1 SCOPE AND TERMS**  
**1.1 SCOPE OF SERVICES**

Project	Description
<b>Comprehensive Achievement Audit</b>	<p>Complete study of the district's achievement profile to identify strengths existing within the school system and barriers to accelerated improvement.</p> <p>Activities include:</p> <ul style="list-style-type: none"> <li>• Data Analysis</li> <li>• Focus Groups</li> <li>• Interviews</li> <li>• Classroom Visits</li> <li>• Student Shadowing</li> </ul> <p>Deliverables:</p> <ul style="list-style-type: none"> <li>• Complete written report, with data and narrative</li> <li>• Oral report to key staff</li> <li>• Collaboration with district leaders to consider implications of findings on action plans</li> </ul>
<b>LCAP Update</b>	<p>Facilitate the revision of the LCAP so Board can approve by beginning of June</p> <ul style="list-style-type: none"> <li>• Needs Assessment and Data Collection</li> <li>• Facilitate LCAP Central Committee, DLAC, DAC input meetings</li> <li>• Consult with District Administrators on plan revision</li> <li>• LCAP Update Online Template completion</li> <li>• Final LCAP Revision after May Revise</li> </ul>
<b>Website Development</b>	<p>Set up of consistent websites for the District Office and each of 8 schools.</p> <ul style="list-style-type: none"> <li>• Install School Loop templates</li> <li>• Upload district-approved content</li> <li>• Collaborate with staff to populate initial websites with school-specific content, adhering to district brand</li> </ul> <p>Note: School District will contract with School Loop for Templates (approx. 20,000 annually)</p>

All Services shall be subject to and performed in accordance with this Agreement and will adhere to all applicable local, state and federal laws, rules and regulations.

1.2 TERM

From April 1, 2015 To June 30, 2015

The term of this Agreement as notes, unless earlier terminated as provided herein. The Parties may mutually agree to extend this term by written amendment. Should the Parties agree to extend the term of this Agreement, the fee for Services shall remain the same.

**2 FEES AND PAYMENTS**

2.1 FEES

District shall pay Consultant for the specified services in an amount not to exceed \$75,000 during this contract term.

2.2 PAYMENTS

Consultant shall submit to District an itemized invoice which indicates work completed by Consultant. District shall review each invoice submitted to determine that the work performed and expenses incurred are in compliance with the provisions of this Agreement. District shall pay Consultant within a reasonable time and in accordance with this Agreement.

**3 EXTRA WORK**

At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any Services which are determined by District to be necessary, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written supplemental work authorization from District.

**4 RESPONSIBILITIES OF CONSULTANT**

4.1 ORGANIZATION

Consultant shall assign Company Contract as Project Manager. The Project manager shall not be removed from the Project or reassigned without the prior written consent of District, which consent shall not be unreasonably withheld. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

#### 4.2 COORDINATION OF SERVICES

Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District staff, consultants and other staff at all reasonable times.

#### 4.3 STANDARD OF CARE:

Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

#### 4.4 INDEPENDENT CONTRACTOR & ADDITIONAL PERSONNEL

Consultant is retained as an independent consultant and is not an agent or employee of the District. No employee or agent of Consultant shall by this Agreement become an agent or employee of the District. The work to be performed shall be in accordance with the work described herein, subject to such direction and amendments from District as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever, except as specifically provided in writing by District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

#### 4.5 LAWS AND REGULATIONS

Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Service. Consultant shall be liable for all violations of such laws and regulations in connection with Services.

#### 4.6 MAINTENANCE OF ACCOUNTING RECORDS

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours with reasonable notice to examine, audit and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

#### 4.7 INSURANCE

(1) Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor or employee to commence work until it has provided evidence satisfactory to the District.

(2) Minimum Requirements and Limits. Consultant shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultant, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

(a) Minimum Scope. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001, edition date 12/04); (2) *Automobile Liability* - Insurance Services Office Business Auto Coverage form number CA 0001 (edition date 12/04), code 1 (any auto); (3) *Workers' Compensation and Employers' Liability* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Professional Liability* - Coverage which is appropriate to the Consultant's profession, or that of its consultants.

(b) Minimum Limits. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability*: Not less than \$1,000,000 per claim/ \$2,000,000 aggregate.

(c) Insurance Endorsements – the insurance policies shall contain the following provisions:

*General Liability* – The general liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

*Automobile Liability* – The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

*Workers Compensation and Employers Liability Coverage* – The insured shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

*Professional Liability* – Consultant and its sub-consultants and subcontractors shall procure and maintain errors and omissions liability insurance with limits discussed in the Section.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced in limits by endorsement or canceled except after thirty (30) days prior written notice or ten (10) days' notice for non-payment premium. Should any of the described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail thirty (30) days written notice to District, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives, and (B) any failure to comply with reporting or other provisions of the policies, shall not affect coverage provided to District, its directors, officials, officers, employees, agents and volunteers.

(e) A Separation of Insured's; No Special Limitations. All insurance required by this Section, except professional liability insurance, shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

(f) Acceptability of Insurers. With the exception of Workers' compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, which are authorized to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the District.

(g) Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the insurer.

## 5 GENERAL PROVISIONS

### 5.1 DELAYS IN PERFORMANCE

(1) Neither District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other disturbances; sabotage or judicial restraint.

(2) Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

### 5.2 SUSPENSION OF SERVICES

The District may, in its sole discretion, suspend all or any part of Services provided hereunder with cost; provide however, that if the District shall suspend Services for a period on ninety (90) consecutive days or more and in addition such suspension is not caused by consultant or the acts or omissions of Consultant, upon recession of such suspension, the compensation will be subject to adjustment to provide for actual costs and expenses incurred by Consultant as a direct result of the suspension and resumption of Services under this Agreement. Consultant may not suspend its services without District's express written consent.

### 5.3 TERMINATION OF AGREEMENT

(1) Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(2) Consultant's Termination for Cause. This Agreement may be terminated by the Consultant upon thirty (30) days written notice to the District only when the District has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the District's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Consultant shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the District to conclude the work performed to the date of termination. Upon the District's request and authorization, Consultant shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

(3) Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Consultant to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(4) Terminated Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

### 5.4 OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

(1) All materials and data, including but not limited to, data on electronic or magnetic media and any materials, documents and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by Consultant pursuant to this Agreement, shall be the sole property of the District, except that Consultant shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that Consultant shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(2) All such materials and data shall be provided to the District, or such other agency or entity as directed by District or required by law, rule or regulation, as they become due during the term of this Agreement as direct by District.

#### 5.5 SAFETY

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

#### 5.6 PROJECT STAFFING

Consultant shall provide adequate staff and resources to facilitate all Consultant's activity. Should Consultant fail to adequately staff a project, the District may, at its sole discretion, retain third party consulting services and back charge Consultant for all third party fees.

#### 5.7 ATTORNEY'S FEES

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

#### 5.8 INDEMNIFICATION

Consultant agrees to protect, save, defend, indemnify and hold harmless the District, their Governing Boards and each member thereof, their officers, employees, agents and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with the negligent acts, errors or omissions or willful misconduct by Consultant, Consultant's agents, officers, employees, sub consultants, or independent consultants hired by Consultant under this Agreement. The only exception to Consultant's responsibility to protect, save, defend and hold harmless District is where a claim, liability, expense or damage occurs due to the sole negligence, or willful misconduct of District. This hold harmless Agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

#### 5.9 AMENDMENTS

This Agreement may not be amended except in writing signed by both Parties.

#### 5.10 SEVERABILITY

If any section, subsection, sentence, clause or phrases of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement.

#### 5.11 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any action brought to enforce the terms of this Agreement shall be brought in a state or federal court located in the County of San Diego, State of California but only after dispute resolution as provided herein.

#### 5.12 CONFLICT OF INTEREST

For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

#### 5.13 SCHOOL SAFETY, FINGERPRINTING AND BACKGROUND INVESTIGATION REQUIREMENTS: Consultant agrees with the provisions of Education Code Section 45125.1 regarding the submission of fingerprints to the California Department of Justice. Consultant shall not be permitted to have any contact with District pupils until such time as Consultant has verified in writing to the District that they have complied with Educational Code Section 45125.1. **(Please attach a copy of this verification.)**

This section may be waived if the District determines that the Consultant and/or its employees will have limited contact with District pupils or if Consultant and/or its employees will be supervised at all times by District employees. Site administrator is waiving this requirement \_\_\_\_\_.

5.14 DRUG/ALCOHOL/TOBACCO-FREE FACILITIES:

ALL DISTRICT FACILITIES ARE DRUG AND TOBACCO-FREE FACILITIES. ANY DRUG, ALCOHOL AND/OR TOBACCO USE (SMOKED OR SMOKELESS) IS PROHIBITED AT ALL TIMES ON ALL AREAS OF THE DISTRICT FACILITIES.

5.15 NOTICES

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid, addressed to the following entities and shall be effective upon receipt thereof.

CONSULTANT Firm Name Principal's Exchange

Attention: Dr. Robin Avelar La Salle

Title: CEO

Street Address 2101 E. Fourth St. Bldg B, 2<sup>nd</sup> Floor

City, State, Zip Santa Ana, CA 92705-3835

Email Address: robin@principals-exchange.org

Telephone Number: ( 626 )824-5199

DISTRICT:

San Ysidro School District

Dena Whittington

Phone Number (619) 428-4476

Assistant Superintendent, Business Services

4350 Otay Mesa Road

San Ysidro, CA 92173

dwhittington@sysd.k12.ca.us

6 ENTIRE AGREEMENT

This Agreement represents the entire understanding of District and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

7 WARRANTY OF AUTHORITY:

Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

CONSULTANT

SAN YSIDRO SCHOOL DISTRICT

Principal's Exchange

Firm Name

*Robin Avelar La Salle*

Signature of Authorized Agent

Signature of Super

Dr. Robin Avelar La Salle, CEO

Print Name, Title

Dena Whittington, Asst. Supt. Business Services

Print Name, Title

47-1006929

Federal Tax ID Number

626 824 5199

Phone Number

# SAN YSIDRO SCHOOL DISTRICT

4350 Otay Mesa Road, San Ysidro, CA 92173

## SCHOOL SAFETY CERTIFICATION FORM

### CERTIFICATION PURSUANT TO EDUCATION CODE SECTION 45125.1 Fingerprinting and Criminal Background Investigation Requirements

(Complete only if pertinent)

The District has determined under Education Code Section 45125.1, subdivision (c) that in performing services to this contract, **Consultant's employees may have contact with pupils.** As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any sub-consultant and/or subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has not criminal charges pending for a felony as defined in Section 45122.1.

Consultant shall certify in writing to the District that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1.

Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant from using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

It is understood that by signing this document, Consultant agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of Consultant who may come in contact with pupils in the performance of services in this contract.

Name	Last 4-digits of SSN or CDL Number
Robin Avelar La Salle	4910
_____	_____
_____	_____
_____	_____
_____	_____

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Consultant Robin Avelar La Salle

Name/title of authorized representative Robin Avelar La Salle, CEO

Signature *Robin Avelar La Salle*

Date 3/25/2015

**SOLAR POWER AND SERVICES AGREEMENT**

between

**EcoBusiness Alliance LLC**

and

**SanYsidro School District**

dated as of

October 8, 2008

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## SOLAR POWER AND SERVICES AGREEMENT

This Solar Power and Services Agreement entered into as of this 8th day of October, 2008 (the "Effective Date"), between EcoBusiness Alliance LLC, a California limited liability company d/b/a Manzana Energy ("Solar Provider"), and San Ysidro School District, a California school district ("Host"; and, together with Solar Provider, each, a "Party" and together, the "Parties").

### RECITALS:

**WHEREAS**, Host owns the Premises (as hereinafter defined); and

**WHEREAS**, Host desires that Solar Provider design, construct and operate solar photovoltaic systems at the Premises for the purpose of providing Solar Power (as hereinafter defined) to Host, and Solar Provider is willing to undertake to do the same; and

**WHEREAS**, Solar Provider desires to sell, and Host desires to purchase, such Solar Power at the Premises, pursuant to the terms and conditions set forth herein; and

**WHEREAS**, Solar Provider expects to receive certain grants, rebates, credits or other incentives related to the Systems to support the installation of the Systems (as hereinafter defined);

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the Parties hereby agree as follows:

#### 1. DEFINITIONS.

- 1.01. Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

*"Actual Quarterly Production"* means, with respect to each System, the amount of energy produced each Quarterly Period.

*"Addendums"* shall have the meaning set forth in Section 2.08.

*"Affiliate"* means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, "control" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. "Control" may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.

“*Agreement*” means this Solar Power and Services Agreement, including the Exhibits and Addendums attached hereto and incorporated herein by reference.

“*Applicable Law*” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“*Arbitrator*” has the meaning set forth in Section 12.02.

“*Assignment*” has the meaning set forth in Section 14.01.

“*Business Day*” means any day other than Saturday, Sunday or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.

“*California DSA*” has the meaning set forth in Section 2.03.

“*Campus*” means each individual school campus in the San Ysidro School District as set forth on Exhibit A hereto which collectively comprise the Premises.

“*Claims*” has the meaning set forth in Section 17.01.

“*Completion Notice*” has the meaning set forth in Section 2.04(b).

“*Confidential Information*” has the meaning set forth in Section 16.01.

“*Construction Work*” means the construction and installation of the Systems and the start-up, testing and acceptance (but not the operation and maintenance) thereof, performed by or for Solar Provider at the Premises.

“*Contract Price*” has the meaning set forth in Section 6.01.

“*CSI Payment*” means non-residential performance based incentive payments from the Utility pursuant to the California Solar Initiative.

“*Default Rate*” means a rate per annum equal to the lesser of (a) ten percent (10%) and (b) the maximum rate allowed by Applicable Law.

“*Designed Capacity*” has the meaning set forth in Section 2.07.

“*Dispute*” has the meaning set forth in Section 12.01.

“*Early Termination Date*” has the meaning set forth in Section 3.01(c).

“*Early Termination Fee*” means as of the Early Termination Date the applicable fee set forth in Exhibit D.

“*Effective Date*” has the meaning set forth in the preamble hereof.

“*Expiration Date*” has the meaning set forth in Section 3.01(a).

“*Fair Market Value*” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, informed neither of whom is under compulsion to complete the transaction. Fair Market Value of the Systems will be determined through the process set forth in Section 3.05.

“*Force Majeure Event*” has the meaning set forth in Section 10.01.

“*Governmental Approval*” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“*Governmental Authority*” means any federal, state, local, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“*Host*” has the meaning set forth in the introductory paragraph hereof.

“*Host Default*” has the meaning set forth in Section 11.02(a).

“*Host Indemnified Parties*” has the meaning set forth in Section 17.01.

“*Indemnified Party*” has the meaning set forth in Section 17.03(a).

“*Indemnifying Party*” has the meaning set forth in Section 17.03(a).

“*Indemnified Persons*” means the Host Indemnified Parties or the Solar Provider Indemnified Parties, as the context requires.

“*Lease*” has the meaning set forth in Section 2.02(a).

“*Lease Financier*” has the meaning set forth in Section 14.03.

“*Liens*” has the meaning set forth in Section 7.01(e).

“*Losses*” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“*Lost Solar Power*” has the meaning set forth in Section 10.03.

“*Minimum Quarterly Production*” means, for each Quarterly Period, the minimum quarterly production for each System set forth on Exhibit E.

“*Monitoring Equipment*” has the meaning set forth in Section 2.06.

“*Notice of Claim*” has the meaning set forth in Section 17.03(a).

“*Operations Date*” has the meaning set forth in Section 2.04(c).

“*Optimal Quarterly Production*” means, for each Quarterly Period, the optimal quarterly production for each System set forth on Exhibit E.

“*Party*” or “*Parties*” has the meaning set forth in the preamble hereof.

“*Person*” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“*Premises*” means the premises described in Exhibit A.

“*Purchase Option Price*” has the meaning set forth in Section 3.04.

“*Quarterly Invoice Date*” means the first Business Day of each of January, April, July, and October during the Term.

“*Quarterly Period*” means the period between the current and next Quarterly Invoice Date.

“*Rejection Notice*” has the meaning set forth in Section 2.04(b).

“*Renewable Energy Benefits*” has the meaning set forth in Section 5.03.

“*Representative*” has the meaning set forth in Section 16.01.

“*Shading*” means the extent (expressed as a percent of total area) of aggregate physical obstruction per hour between the Systems’ solar arrays and the sun between the hours of 9:00 a.m. and 4:00 p.m., local time.

“*Solar Insolation*” means the amount of kWhs per square meter falling on a particular location, as published by the National Renewable Energy Laboratory through its PV Watts program.

“*Solar Power*” means the aggregate supply of on-site electrical energy output from the Systems together with certain peak load coincident reductions, building energy conservation, and other on-site energy services or efficiencies associated with the solar energy production.

“*Solar Power Multiplier*” has the meaning set forth in Section 2.08.

“*Solar Power Payment*” has the meaning set forth in Section 6.01.

“*Solar Provider*” has the meaning set forth in the preamble hereof.

“*Solar Provider Default*” has the meaning set forth in Section 11.01(a).

“*Solar Provider Indemnified Parties*” has the meaning set forth in Section 17.02.

“*System*” (collectively, “*Systems*”) means, with respect to each Campus, the integrated assembly of photovoltaic panels, inverters, racking systems, converters, wiring and other materials, more specifically described in Exhibit B hereto and interconnected with each respective Utility and installed at such Campus.

“*System Acceptance Testing*” has the meaning set forth in Section 2.04(a).

“*System Expiration Date*” has the meaning set forth in Section 3.01(b).

“*System Installation Period*” means, with respect to each System, the period from (and including) the date that Solar Provider (or its subcontractors) commence physical installation of such System on the Premises to (but excluding) the Operations Date.

“*System Operations*” means, with respect to each System, the operation, maintenance and repair of such System performed by or for Solar Provider during the Term, as more particularly described in Section 4.01.

“*System Term*” has the meaning set forth in Section 3.01(b).

“*System Test Requirements*” has the meaning set forth in Section 2.04(b).

“*Term*” has the meaning set forth in Section 3.01(a).

“*Total Actual Quarterly Production*” means, with respect to each Quarterly Period, the aggregate Actual Quarterly Production for the Systems.

“*Total Early Termination Fee*” means, with respect to each Quarterly Period, the aggregate Early Termination Fee for the Systems as set forth on Exhibit D hereto.

“*Total Minimum Quarterly Production*” means, with respect to each Quarterly Period, the aggregate Minimum Quarterly Production for the Systems as set forth on Exhibit E hereto.

“*Total Optimal Quarterly Production*” means, with respect to each Quarterly Period, the aggregate Optimal Quarterly Production for the Systems as set forth on Exhibit E hereto.

“*Total Solar Power Payment*” means, with respect to each Quarterly Period, the aggregate Solar Power Payment for the Systems as set forth on Exhibit C hereto.

“*Total Target Capacity*” has the meaning set forth in Section 5.02.

“*Trigger Date*” has the meaning set forth in Section 10.03.

“*Utility*” means, with respect to each Campus, the local electric utility that provides electricity and interconnection services to Host at such Campus.

"*Unearned CSI Payment*" means as of the Early Termination Date the applicable amount set forth in Exhibit K.

1.02. Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation". The words "hereof", "herein", and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to "Exhibits", "Addendums", "Articles" and "Sections" refer to Exhibits, Addendums, Articles and Sections of this Agreement.

## 2. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

### 2.01. Right to Terminate this Agreement.

- (a) If Solar Provider (with Host's assistance to the extent necessary) is unable to reserve and receive a rebate or subsidy in an amount not less than the amount stated in Exhibit I, said rebate or subsidy being made available from the federal government, state, local utility or other source for the installation of the Systems as designed or if any of the conditions in Section 3.07 are not met, Solar Provider has the unilateral right to terminate this Agreement and, in the case where the Construction Work has been initiated or substantially completed, remove any and all System infrastructure or components pursuant to Section 3.06.
- (b) If fifteen (15) months after the Effective Date, Solar Provider has not initiated Construction Work as to any Campus, Host may submit written notice to Solar Provider to require that Solar Provider identify the date on which Construction Work on such Campus shall commence and the Operations Date for such Campus. The Operations Date identified by Solar Provider shall be no longer than six (6) months after the date of Host's notice pursuant to this Section 2.01(b). If Solar Provider does not respond in writing within thirty (30) days to Host's notice pursuant to this Section 2.01(b), or cannot or does not identify the Operations Date with respect to such Campus as required in this Section, or if such Operations Date does not occur within one hundred eighty (180) days after Host's notice pursuant to this Section 2.01(b), Host may terminate this Agreement.
- (c) If the Operations Date for any Campus shall not have occurred within nine (9) months of the commencement of Construction Work on such Campus, Host may submit written notice to Solar Provider to require that Solar Provider identify the Operations Date for such Campus. If Solar Provider does not respond within thirty (30) days to Host's notice pursuant to this Section 2.01(c) or if Solar Provider does not cause the Operations Date to occur for such Campus within ninety (90) days of Host's notice pursuant to this Section 2.01(c), Host may terminate this Agreement.

2.02. Construction Work.

- (a) Host hereby leases to Solar Provider and Solar Provider hereby leases from Host the Premises upon which to locate the Systems for the Term of this Agreement (the "Lease"). In addition, Host hereby grants to Provider such rights of access, ingress and egress outside of the Premises as may be necessary to facilitate performance of Construction Work, System Operations or removal of any System. Host agrees to execute any documents reasonably necessary and requested by Solar Provider to evidence such grant. Beginning on the Effective Date and on the anniversary of each Effective Date each year Solar Provider shall pay to Host rent in the amount of one dollar (\$1.00), which will appear as a credit upon the quarterly invoice following the Effective Date.
- (b) Solar Provider will cause each System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement. Host shall have the right to review and approve all construction plans including engineering evaluations of the impact of each System on (i) the structural integrity and strength of the Premises and (ii) the then current applicable Utility's equipment and service. Solar Provider represents that directly or through its agents it is fully familiar with the Premises and is satisfied that the Premises are fully adequate and suitable for installation and operation of each System. Solar Provider shall (x) subject to Section 2.03, seek and obtain necessary permits, certificates or other authorizations for each System and (y) comply with and perform any necessary inspections of each System, all at Solar Provider's sole expense.
- (c) All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be paid for by Solar Provider. Solar Provider shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of the Construction Work, Solar Provider shall remove all temporary distribution systems.
- (d) Solar Provider may, with written permission of Host, use Host's existing utilities at any Campus (including, but not limited to, the applicable Utility) by making to be agreed payments to Host for utilities used by Solar Provider for construction.

2.03. Permits and Other Approvals. Host shall assist Solar Provider in obtaining necessary approvals from each Utility for the interconnection of each System with the applicable Utility. If any Utility fails to approve the interconnection of a System or requires additional equipment from that shown in Exhibit B-X (as set forth in Section 2.08) that materially increases the cost of the installation of such System or otherwise materially affects the economics of the Solar Provider under this Agreement, Solar Provider may, at Solar Provider's option, terminate this Agreement. If Solar Provider elects not to terminate this Agreement hereunder, Host shall assist Solar Provider in obtaining approval for a modified System that will likely succeed in obtaining such Utility's approval for interconnection. Host shall assist Solar Provider in obtaining the necessary

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local Governmental Approvals, including, without limitation, any permits and approvals required by the California Division of the State Architect ("California DSA"), which may include provision by Host of electrical drawings and structural drawings for the Premises, if available. If any applicable Governmental Authority does not provide the necessary Governmental Approvals, Solar Provider may, at the Solar Provider's option, immediately terminate this Agreement upon written notice that such application for permit has not been accepted or such permit has been denied. The failure of Solar Provider to obtain any required Governmental Approval shall not constitute a Solar Provider Default.

#### 2.04. System Acceptance Testing

- (a) Solar Provider shall, at its sole cost and expense, conduct testing of each System ("System Acceptance Testing"). Solar Provider shall notify Host in writing not less than five (5) Business Days prior to the anticipated date of each System Acceptance Testing. Host shall have the right, but not the obligation, to be present at and observe each System Acceptance Testing, at Host's sole cost and expense. Prior to the commencement of each System Acceptance Testing and as a condition precedent thereto, Host shall promptly select and pay for a third party to conduct an inspection of the applicable Campus to determine that the Construction Work did not cause any damage to or degradation of the Campus. System Acceptance Testing will not proceed until such Campus inspection has demonstrated that no such damage or degradation has occurred. Solar Provider shall be responsible for all costs and expenses of any such damage or degradation of any Campus caused by Solar Provider or Solar Provider's agents and contractors. Host acknowledges that a delay in each System Acceptance Testing would harm Solar Provider and therefore Host covenants to use commercially reasonable efforts to expedite each Campus inspection required by this Section.
- (b) Using such instruments and meters as have been installed for test purposes, each System must test as capable of generating electric energy for four (4) continuous hours (the "System Test Requirements"). Upon completion of a testing of a System, and provided that such System has been approved for interconnected operation by the applicable Utility, then Solar Provider shall send a written notice to Host indicating whether System Test Requirements were met (each, a "Completion Notice"), accompanied by a copy of the results of the System Acceptance Testing. Host shall have ten (10) Business Days after its receipt of each Completion Notice to review such System Acceptance Testing results. If the System Acceptance Testing indicates that such System fails to meet the System Test Requirements and Host provides Solar Provider with a detailed, good faith written notice of such failure (each, a "Rejection Notice") within such ten (10) Business Day period, then Solar Provider shall promptly remedy at Solar Provider's cost the relevant specified failure and conduct new System Acceptance Testing for such System until the System Acceptance Testing indicates that such System meets the System Test Requirements. In each such case, Solar Provider shall send a new Completion Notice to Host with a copy of the results of the new

System Acceptance Testing as provided above and the foregoing procedures shall be repeated.

- (c) Absent Solar Provider's receipt of a timely Rejection Notice from Host pursuant to Section 2.04(b), the "Operations Date" with respect to each System shall be the date of Host's receipt of the Completion Notice for such System. If a Rejection Notice is timely received by Solar Provider and the testing procedures are repeated one or more times, the Operations Date with respect to each System shall be the date of Host's receipt of the last, uncontested Completion Notice for such System.
- 2.05. Solar Access Easement. Solar Provider shall provide commercially reasonable assistance to Host in securing such solar access easements from third parties as are necessary to prevent overshadowing of each System and subsequent reduction in System electricity production. Host will use reasonable efforts to secure an easement for each System, as necessary, and to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to each System.
- 2.06. Internet Connection. Host hereby grants to Solar Provider the right to connect System monitoring equipment ("Monitoring Equipment") to the necessary intranet and/or internet networks of Host so that it is possible for Solar Provider to remotely monitor the production by each System. Host will, at its sole cost and expense, provide Solar Provider with a working Ethernet connection to intranet and/or internet network, in the area of the main distribution facility or intermediary distribution facility at each Campus.
- 2.07. Incremental Completion of Campuses. The Parties acknowledge that the Construction Work and System Acceptance Testing shall be completed in increments as to each Campus before the Construction Work and System Acceptance Testing for all Systems is complete. Within thirty (30) days following final approval of each Campus's System design by the California DSA, Solar Provider will calculate the capacity of such System based on such approved design and System specifications and provide written notice thereof to Host. Such capacity shall be called the "Designed Capacity" applicable to such System.
- 2.08. Adjustment to Campus Exhibits. Written notification of each System's Designed Capacity pursuant to Section 2.07 shall be accompanied by, for each approved Campus (with "X" referring to the number assigned to such Campus in Exhibit A hereto), the following addendums (collectively, the "Addendums");
- (a) an Exhibit B-X in the form of Exhibit B describing the California DSA approved System on such Campus;
  - (b) an Exhibit C-X in the form of Exhibit C setting forth the applicable Solar Power Payment for each quarter for such Campus. The Solar Power Payment for such Campus shall be the product of (i) the Total Solar Power Payment and (ii) the Designed Capacity for such System divided by the Total Target Capacity (such ratio the "Solar Power Multiplier"), and;

- (c) an Exhibit E-X in the form of Exhibit E setting forth the allocable Minimum Quarterly Production and Optimal Quarterly Production for such Campus. The Minimum Quarterly Production and Optimal Quarterly Production for such Campus shall be the product of the Solar Power Multiplier and each Total Minimum Quarterly Production and each Total Optimal Quarterly Production, respectively.
- (d) In addition to the foregoing, upon determination of Designed Capacity, Solar Provider will update Exhibit K by completing columns A and C thereof.

Upon receipt and approval by Host that the calculations in each Addendum correspond with this Section 2.08, which approval shall not be unreasonably withheld, all such Addendums pursuant to this Section 2.08 shall be incorporated into the Agreement, with any reference to "Exhibit B", "Exhibit C", "Exhibit E" or "Exhibit K" herein including all Addendums to each Exhibit, as applicable.

### 3. TERM AND TERMINATION.

#### 3.01. Term and System Term.

- (a) The Term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty five (25) years after the last Operations Date (the "Term"), unless and until terminated earlier pursuant to the provisions of this Agreement. The date this Agreement terminates by reason of the expiration of the Term is hereinafter referred to as the "Expiration Date."
- (b) Notwithstanding the foregoing clause (a), this Agreement shall only apply to each System for a term commencing on the Effective Date and continuing for a period of twenty five (25) years after such System's Operations Date (with respect to each System, the "System Term"), unless and until terminated earlier pursuant to the provisions of this Agreement; provided, however, that those provisions herein expressly stated to survive the termination of this Agreement shall continue to apply to each System following the end of its System Term. The date this Agreement terminates as to each System by reason of the expiration of a System Term is hereinafter referred to as a "System Expiration Date."
- (c) Any date other than the Expiration Date or a System Expiration Date on which this Agreement terminates as to any or all the Systems in accordance with the terms hereof is hereinafter referred to as the "Early Termination Date" of such System or Systems.

3.02. Change of Premises. If Host vacates any or all Campuses prior to the Expiration Date, then Host shall have the option to provide Solar Provider, with respect to each vacated Campus, with a mutually agreeable substitute school campus located within the same Utility district as the terminated System or in a location with similar Solar Insolation. Host shall provide at least ninety (90) days' written notice prior to the date on which it desires to effect such substitution. In connection with such change of location, Host shall execute an amended and restated agreement that shall have all of the same terms as this

Agreement (including warranties) other than the "Effective Date" of such amended and restated agreement, and the amended and restated agreement shall be deemed to be a continuation of this Agreement without termination. Host shall also provide any acknowledgements, consents or releases reasonably required by Solar Provider's Lease Financier in connection with the change of location. Host shall pay all costs and expenses associated with relocation of such System including all costs and expenses incurred by or on behalf of Solar Provider in connection with removal of such System from the existing Premises and installation and testing of such System at such new premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refilling the security interest of Solar Provider's Lease Financier in such System. Host shall continue to make all Solar Power Payments during any time period in connection with such change of premises. For purposes of calculating Solar Power Payments payable during the time period in connection with a change of premises Solar Power shall be deemed to have been produced at the same applicable pro rata rate as the preceding Total Actual Quarterly Production, as if there had been no Solar Power interruption. Solar Provider shall remove such System from the vacated location prior to the termination of Host's ownership or right to use such location. Solar Provider will not be required to restore such location to its prior condition but shall promptly pay Host for any damage caused by Solar Provider during removal of such System. If the substitute school campus has inferior Solar Insolation as compared to the original Campus, Solar Provider shall have the right to make an adjustment to Exhibits C and D such that Host's payments to Solar Provider are the same as if such System were located at the original Premises.

- 3.03. Early Termination. Host may terminate this Agreement as to one or more Systems prior to any applicable System Expiration Date for any reason upon six (6) months' prior written notice, provided, however, that Host may not terminate this Agreement pursuant to this Section 3.03 prior to the sixth anniversary of the Operations Date of such System. Upon such termination, (a) Host shall pay, as liquidated damages, the applicable Early Termination Fee for such System set forth in Column 2 of Exhibit D or (b) if Host so requests, Solar Provider shall disconnect the System or Systems, as applicable, and remove them from the Premises and Host shall pay, as liquidated damages, the applicable Early Termination Fee set forth in Column 1 of Exhibit D. Upon Host's payment to Solar Provider of the applicable Early Termination Fee for such System and the other amounts specified in this Section 3.03, this Agreement shall terminate automatically as to such System or Systems, as applicable. Section 3.03 of this Agreement shall not apply to any termination of this Agreement by Host pursuant to Section 2.01, Section 10.03 or Section 11.01.
- 3.04. Purchase Option upon Expiration or Early Termination of this Agreement. So long as a Host Default shall not have occurred and be continuing, Solar Provider grants to Host an option to purchase each System (i) as of the applicable System Expiration Date or (ii) on the sixth anniversary of the Operations Date of such System and every two (2) year anniversary thereafter, in each case, for a purchase price (the "Purchase Option Price") equal to the greater of (a) the Early Termination Fee for such System at such time as specified in Exhibit D and (b) the Fair Market Value of such System at such time, as determined pursuant to Section 3.05 hereof. If Host intends to exercise its purchase

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option with respect to any System, then at least three (3) months prior to the intended purchase date, Host shall provide written notice to Solar Provider of Host's intent to exercise its purchase option for such System. Upon receipt of Host's notice, Solar Provider shall specify the Purchase Option Price, and Host shall then have a period of ten (10) days after notification to confirm or retract its decision to exercise the purchase option or to request determination of the Fair Market Value of such System by appraisal as provided for in Section 3.05. In the latter case, within ten (10) days of the appraiser's determination, Host shall confirm or retract its decision to exercise the purchase option. In the event Host confirms its intent to exercise the purchase option, (i) the Parties will promptly execute all documents necessary to (A) cause title to such System to pass to Host, free and clear of any Liens immediately subsequent to the purchase date, and (B) assign all warranties for such System to Host, and (ii) Host will pay the Purchase Option Price to Solar Provider together with any applicable sales taxes. In the event Host retracts its exercise of, or fails to timely confirm, the purchase option, all provisions of this Agreement shall continue in full force and effect without regard to the actions taken under this Section 3.04.

- 3.05. Determination of Fair Market Value. The Fair Market Value of each System or the Solar Power, as applicable, shall be determined by the mutual agreement of Host and Solar Provider; provided, however, if Host and Solar Provider cannot mutually agree to a Fair Market Value within ten (10) days of the need to determine Fair Market Value pursuant to Section 3.04, then the Parties shall mutually select a nationally recognized independent appraiser with experience in the solar photovoltaic industry to determine the Fair Market Value. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Each Party shall be responsible for one-half of the fees and expenses of the appraiser.
- 3.06. Removal of Systems at Expiration. Subject to Host's exercise of its Purchase Option as to one or more Systems pursuant to Section 3.04, upon the expiration or earlier termination of this Agreement according to its terms, except for early termination by Host pursuant to Section 3.03, Solar Provider shall, at Solar Provider's expense, remove all of its tangible property comprising the Systems from the Premises on a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date. The Premises shall be returned to its original condition, except for System mounting pads or other support structures and ordinary wear and tear. In no case shall Solar Provider's removal of the Systems affect the integrity of, or cause damage to, the Premises. Host will select and pay for Premises inspection prior to removal to document the condition of the Premises prior to removal and another Premises inspection following removal to document that the removal and remediation conditions of this Section 3.06 have been satisfied. For purposes of Solar Provider's removal of the Systems, Host's covenants pursuant to Section 7.01 shall remain in effect until the date of actual removal of the Systems. Solar Provider shall leave the Premises in neat and clean order.
- 3.07. Conditions of this Agreement Prior to Installation. The following are conditions of this Agreement that, if not met prior to commencement of the Construction Work on ~~5.6~~

System, will, at Solar Provider's election, eliminate any requirement for Solar Provider to commence construction with respect to such System and eliminate any other obligation that Solar Provider may have hereunder with respect to such System:

- (a) The structural integrity of the Premises, as is, is sufficient to accommodate the Systems, as demonstrated by an inspection of the Premises by a third party selected by Solar Provider and paid for by Solar Provider;
- (b) There is a suitable electrical interconnection point of sufficient capacity to accommodate each System as designed located within 500 feet of each System as described in Exhibit A and Exhibit B;
- (c) For any underground placement of electrical cable or conduit, there are no rocks or other obstructions that would prevent ordinary trenching equipment to be used for the installation of underground electrical cable from providing a trench of sufficient depth to comply with National Electrical Code;
- (d) There exist no other unknown site conditions or construction requirements that would materially increase the cost of Construction Work or would adversely affect the electricity production from the Systems as designed;
- (e) The rebates or subsidies described in Exhibit I are available to Solar Provider for the System;
- (f) There is no material adverse change in the regulatory environment, subsidy program or federal tax code after the Effective Date and prior to the installation of the Systems that would adversely affect the economics of the installation for Solar Provider and its investors;
- (g) There is no material adverse change that affects the creditworthiness of Host or the ability to obtain credit-committee approval of any Lease Financier or any Lease Financier declines for any reason to provide financing for the System;
- (h) Host has delivered a fully executed (i) Acknowledgement and Confirmation, in the form of Exhibit H attached hereto and (ii) a release or acknowledgement from any mortgagee of the Premises, if required by any Lease Financier to establish the priority of its interest in the Systems;
- (i) Host has delivered a favorable written opinion from Host's legal counsel, dated the Effective Date, addressed to Solar Provider, covering, on Host's behalf, the matters addressed in Section 8.01 and such other matters as Solar Provider may request and otherwise in form and substance satisfactory to Solar Provider;
- (j) Solar Provider has procured a fully executed interconnection agreement, with each Utility, if applicable; and
- (k) There is no material adverse change in the availability of System components, including material increases in the projected costs to build the Systems.

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4. OPERATION OF THE SYSTEM.

4.01. Solar Provider as Operator. The Systems will be operated and maintained by or for Solar Provider at its sole cost and expense. The Solar Provider may retain one or more third parties as its agent with sufficient operations experience and technical expertise in the operation or maintenance of photovoltaic solar systems to conduct the Systems; provided that under no circumstance shall the Host be responsible for the fees, costs and expenses of any third party retained by the Solar Provider to provide maintenance on the Systems. "System Operations" means, with respect to each System, all actions, including monitoring and maintaining a System, necessary for Solar Provider to fulfill its covenants under Section 7.02. Any repair or maintenance of the Systems will be completed by or for Solar Provider, at its sole cost and expense, for Solar Provider's benefit as legal and beneficial owner of the Systems.

4.02. Malfunctions and Emergencies.

- (a) Host and Solar Provider each shall notify the other as soon as practically possible, but in no event later than twenty-four (24) hours following their discovery, of any material malfunction in the operation of any System or of their discovery of an interruption in the supply of Solar Power. Solar Provider and Host shall cooperate to establish procedures such that each System may automatically provide notice of the presence of such conditions requiring Solar Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- (b) Solar Provider and Host each shall notify the other Party upon the discovery of an emergency condition associated with the Systems. If an emergency condition exists, Solar Provider shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, Host shall contact Solar Provider using the contacts listed in Exhibit F.

4.03. Metering.

- (a) Maintenance and Testing. Solar Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter that will accurately measure the electrical energy provided by each System. Solar Provider shall furnish a copy of all technical specifications and accuracy calibrations for the meter. The meter will be hooked up to internet or intranet connection so that the Solar Provider may remotely monitor the kWh output of each System from time to time. Upon written request by Host, Solar Provider shall conduct testing of the metering equipment.
- (b) Adjustments. If testing of the metering equipment pursuant to Section 4.03(a) indicates that such equipment is in error by more than two percent (2%), then Solar Provider shall promptly repair or replace such equipment. Solar Provider shall make a corresponding adjustment to the records of the amount of electrical energy provided by the affected System delivered based on such test results for (i) the actual period of time when such error caused inaccurate meter recordings, if

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that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the last previous test confirming accurate metering or the date the meter was placed into service, but not to exceed two (2) years. If testing is pursuant to Host's request in Section 4.03(a) and testing indicates the equipment is in error by two percent (2%) or less, Host shall be responsible for the costs of the testing.

5. DELIVERY OF SOLAR POWER.

- 5.01. Purchase Requirement. Host agrees to purchase one hundred percent (100%) of the Solar Power of the Systems during each relevant quarter of the Term. While the Solar Power is calculated and billed as set forth in Exhibit C, it represents a package of services as set forth in the definition herein. The payment for Solar Power is calculated to include all of the defined services described herein. Neither Party may claim that by this Agreement, Solar Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Solar Provider is not, and shall not claim, to be providing electric utility services to Host.
- 5.02. Total Target Capacity. The Parties understand and acknowledge that the capacity of the Systems was initially determined by calculating the amount of electrical energy necessary to offset eighty percent (80%) of the annual cost incurred by Host with the local electric utility in the year prior to the execution of this Agreement ("Total Target Capacity"). The Parties further acknowledge that the Systems' production at Total Target Capacity is aspirational and may be limited by, among other things, physical limitations of the Premises on which the Systems are to be installed, the structural integrity of the Premises, the Shading and limitations placed on the size and design of the Systems by the California DSA. Solar Provider shall exercise commercially reasonable efforts to ensure that the Systems achieve Total Target Capacity by using fixed photovoltaic panels mounted on roofs within the Premises.
- 5.03. Renewable Energy Benefits, Etc. Host's purchase of Solar Power from the Solar Provider does not include Renewable Energy Benefits or any other attributes of ownership of the Systems. All Renewable Energy Benefits shall be retained by Solar Provider. For purposes of this Agreement, "Renewable Energy Benefits" shall include, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, production tax credits, emissions allowances, green tags, tradeable renewable credits, Green-e® products, accelerated depreciation, and rebates and subsidies. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Host shall submit to Solar Provider for approval any press releases regarding Host's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Solar Provider. Approval shall not be unreasonably withheld, and Solar Provider's review and approval shall be made in a timely manner to permit Host's timely publication. Host and Solar Provider may by mutual written agreement set forth specific statements that may be used by Host in any press releases that address Host's use of solar or renewable energy.

5.04. Title to System. Throughout the duration of this Agreement, Solar Provider, or an assignee permitted pursuant to Article 14 herein, shall be the legal and beneficial owner of the Systems at all times, including all Renewable Energy Benefits, and the Systems shall remain the personal property of Solar Provider and shall not attach to or be deemed a part of, or fixture to, the Premises. The Systems shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the Systems and the legal status or classification of the Systems as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Systems as a fixture of the premises, Host shall provide a disclaimer or release from such lienholder. Host consents to the filing of a disclaimer of the Systems as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.

6. PRICE AND PAYMENT.

6.01. Solar Power Payments. Subject to Section 6.03, with respect to each System after its applicable Operations Date, Host shall pay to Solar Provider a quarterly payment (each, a "Solar Power Payment") for the Solar Power produced by each System during the Term equal to the amount set forth opposite the applicable period in Exhibit C-X applicable to each System. The sum of all Solar Power Payments paid (and remaining to be paid) during the Term, as adjusted pursuant to Section 6.03, shall be the "Contract Price" under this Agreement. Solar Provider shall invoice Host on the first day of each Quarterly Period (each, a "Quarterly Invoice Date"), commencing on the first Quarterly Invoice Date to occur after the Operations Date with respect to a System, for the Solar Power Payment due for each System in respect of such Quarterly Period. The first invoice shall include any production that occurred prior to the initial Quarterly Invoice Date. The last invoice shall be pro rated, as necessary, to include production only through the Expiration Date of this Agreement.

6.02. Maintenance of Minimum Quarterly Production. During the Term, Solar Provider will exercise commercially reasonable efforts to cause the then applicable Actual Quarterly Production for each System to equal or exceed the applicable Minimum Quarterly Production for such System for the relevant Quarterly Period. Solar Provider will be deemed to have complied with the foregoing covenant if, in any Quarterly Period of the Term during which then applicable Actual Quarterly Production for a System is less than the applicable Minimum Quarterly Production for such System for the relevant Quarterly Period, such shortfall is offset by unused System Credits. "System Credits" shall mean the amount by which the Total Actual Quarterly Production in any Quarterly Period during the Term exceeds the Total Optimal Quarterly Production for the relevant Quarterly Period. System Credits will be carried forward from quarter to quarter and year to year during the Term. If there are insufficient unused System Credits to offset such shortfalls, Section 6.03 shall apply.

6.03. Solar Power Payment Adjustments. Within thirty (30) days after the end of each Quarterly Period under this Agreement, and on the Expiration Date or Early Termination

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Date, as applicable, Solar Provider shall determine the total kWh of Solar Power delivered through each System during the previous Quarterly Period, or for the period prior to the Expiration Date or Early Termination Date, as applicable, based on Solar Provider's metering equipment described in Section 4.03 (the "Actual Quarterly Production"). If the Actual Quarterly Production for any System is less than the applicable Minimum Quarterly Production for such System during such Quarterly Period and is not offset by unused System Credits and further provided that such shortfall was not caused by a Force Majeure Event, then Solar Provider shall credit to Host an amount to reflect such deficiency in energy production. Such credit shall be a dollar amount equal to: (i) the product of the Solar Power Payment allocable to such System for the Quarterly Period in question and the shortfall for such period, (ii) divided by the Minimum Quarterly Production for such System for the Quarterly Period in question. Such credit shall be applied to the next Solar Power Payment, provided that to the extent the credit is not exhausted by such next Solar Power Payment the credit shall be paid by Solar Provider to Host in cash.

- 6.04. Time of Payment. Host shall pay all undisputed amounts due hereunder within thirty (30) days after the applicable Quarterly Invoice Date; provided that the Host shall have received an invoice from the Provider at least fifteen (15) days after the applicable Quarterly Invoice Date.
- 6.05. Payment Instructions. Host shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Solar Provider. All undisputed payments that are not paid when due shall bear interest accruing from the date thirty (30) days after the Quarterly Invoice Date until paid in full at a rate equal to the Default Rate. Except as provided in Section 6.03, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind. Unless otherwise instructed in writing, all payments to be made by the Host to the Solar Provider under this Agreement shall be made directly to the Lease Financier or its agent.
- 6.06. Disputed Payments. The Parties shall attempt to resolve any Dispute regarding payments under this Agreement amicably. If the Parties cannot resolve the Dispute within sixty (60) days, either Party may submit the Dispute to arbitration in accordance with Article 12; provided that, during the time a Dispute is pending, the disputing Party shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. No Party may withhold, deduct or set-off against amounts or credits any undisputed amounts owed by such Party to the other Party during the time that a Dispute is pending.
- 6.07. Adjustments to Contract Price. In the event there is any change in Applicable Law (other than federal and state income tax codes) subsequent to the Effective Date that results in a material change in Solar Provider's costs to provide the Solar Power to the Host hereunder, Solar Provider will promptly submit to Host a written notice setting forth (i) the details of the change in Applicable Law including a reference to such change, (ii) the

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manner in which such change in Applicable Law materially effects Solar Provider's costs to provide the Solar Power, including reasonable computations in connection therewith, and (iii) Solar Provider's proposed adjustment to the then applicable and future Solar Power Payments to reflect such expected material changes in Solar Provider's costs. Subject to verification of the change in Applicable Law, and receipt of and written agreement with the computations regarding the cost of complying with such change, with such written agreement not to be unreasonably withheld, the Host agrees to an adjustment in the then applicable and future Solar Power Payments such that the new Solar Power Payment compensates Solar Provider for one-half of the total cost increase related to the change of Applicable Law. The adjustment shall then remain in effect over the remaining years of the Term of this Agreement or until the Applicable Law that caused the increase in costs is altered, repealed, or made inapplicable to the Systems. In the event the cost would have been incurred by Host regardless of the existence of this Agreement, then the applicable and future Solar Power Payments shall be adjusted to recover the full amount of the total cost increase.

7. GENERAL COVENANTS.

7.01. Host's Covenants. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Host represents and covenants to the following:

- (a) Health and Safety. Host shall at all times maintain the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and property.
- (b) Access. Host shall limit access to the Systems to authorized personnel of the Host. No students or other persons shall be granted access to the Systems, or the roofs the Systems are located on, without being accompanied by authorized personnel.
- (c) Security. Host shall provide and take reasonable measures for security of the Systems, including commercially reasonable monitoring of the Premises' alarms and other security systems.
- (d) Notice of Damage. Host shall promptly notify Solar Provider of any matters it is aware of pertaining to any damage to or loss of the use of the Systems or that could reasonably be expected to adversely affect the Systems or their operation.
- (e) Liens. Host shall not cause, create, incur, assume or suffer to exist any mortgage, lien (including mechanics', labor or materialman's liens), security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Systems or any interest therein. If Host breaches its obligations under this Section, it shall immediately notify Solar Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Solar Provider, and shall indemnify Solar Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- (f) Consents and Approvals. Host shall assist Solar Provider in obtaining, maintaining, and securing necessary approvals, permits, and authorizations related to

to the installation of the Systems by providing any authorizations needed for the above and signing applications for permits and utility grid interconnection applications. Host shall provide any authorizations required of Host in a timely manner, including execution of the Assignment of Payment Form attached hereto as Exhibit J. To the extent that only Host is authorized to obtain or issue any necessary approvals or permits, Host shall deliver to Solar Provider copies of said consents, approvals, permits, and authorizations relating to the performance of Host's obligations and the rights granted by Host hereunder and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Host is a party or by which Host is bound.

- (g) Access to Premises, Grant of Lease. Subject to the terms of Host's Lease for the Premises, during the performance of the Construction Work, System Operations or System removal pursuant to Article 2, Article 10 or Section 11.02(b), Host shall provide Solar Provider with access to the Premises to allow Solar Provider to perform the Construction Work, System Operations and System removal, including ingress and egress rights to the Premises for Solar Provider and its employees, contractors and sub-contractors and access to electrical panels and conduits to interconnect or disconnect the Systems with the Premises' electrical wiring. As more particularly described in Section 2.02(a) above, Host hereby leases to Solar Provider the Premises from the Effective Date throughout the Term and for so long as needed after termination to remove the Systems pursuant to the applicable provisions herein. Host and its authorized representatives shall at all times have access to and the right to observe the Construction Work or System removal but shall not interfere or handle any Solar Provider equipment or the Systems without written authorization from Solar Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 4.02, Host shall be permitted to take those actions necessary to prevent injury as specified in Section 11.01(c). Upon the request of Solar Provider, Host will execute and acknowledge a memorandum of Lease in a form requested by Solar Provider for recording by Solar Provider to memorialize the Lease of the Premises.
- (h) Covenant of Quiet Enjoyment. Host covenants that at all times during the term of the Lease, Solar Provider's quiet enjoyment of the Premises or of any part thereof shall not be disturbed as long as Solar Provider is not in default under the terms of this Agreement beyond any applicable grace or cure period.
- (i) Temporary Storage Space During Installation or Removal. Host shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Construction Work, System Operations or System removal, and access for rigging and material handling. Host shall provide Solar Provider a reasonable area for construction laydown.

- (j) Meter Data. If available at no cost to Host, Host shall provide Solar Provider with Host's 15-minute electricity usage data for the Premises, if available.
- (k) Maintenance of Premises. Host will maintain the Premises in substantially the same conditions as existed on the Effective Date; provided, however, that Solar Provider shall cooperate reasonably with Host in any modernization work or other changes to the Premises that do not or can not be reasonably projected to adversely affect any System in any material fashion.
- (l) Shading. At all times during the Term, Host shall ensure that Shading of the Systems' solar arrays does not exceed the lesser of (i) the Shading as it exists on the Effective Date or (ii) ten percent (10%).

7.02. Solar Provider's Covenants. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Solar Provider represents and covenants to the following:

- (a) Governmental Approvals. Solar Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Solar Provider to enable Solar Provider to perform its obligations under this Agreement. At the written request of the Host, Solar Provider shall deliver copies of all necessary Governmental Approvals obtained hereunder to Host.
- (b) Safety Regulations. Solar Provider shall take all necessary and reasonable safety precautions with respect to providing the Construction Work and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property, including, but not limited to, the safety and security regulations set forth in Exhibit L. Solar Provider shall immediately report to Host any death, injury, or property damage to Host's or a third party's property that occurs on the Premises.
- (c) System Condition. Solar Provider shall take all actions reasonably necessary to ensure that the Systems are continuously capable of providing Solar Power to the Host in the amounts set forth on Exhibit E to this Agreement.
- (d) Liens. Solar 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. Solar Provider also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Solar Provider or its agents and subcontractors on the Premises. If Solar Provider breaches its obligations under this Section, it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

- (e) No Infringement. The Systems and Solar Provider's services hereunder shall not infringe any third party's intellectual property or other proprietary rights.
- (f) Background Checks. The subcontractors and contractors of Solar Provider shall comply with Host's security measures and other reasonable vetting requirements, as further set forth in Exhibit L.
- (g) As-Built Drawings. Solar Provider shall provide Host with as-built drawings of the Systems when available.

## 8. WARRANTIES.

- 8.01. 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 to enter into, execute, deliver, and perform its obligations under this Agreement;
  - (c) it has taken all requisite corporate, administrative or other action to approve the execution, delivery, and performance of 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; and
  - (f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a Party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.
- 8.02. Requisite Standards. The Systems shall be installed with due care by qualified employees, representatives, agents or contractors of Solar Provider and shall conform to applicable industry standards and practices and Applicable Law and the specifications in Exhibit B. If Solar Provider fails to meet any of the foregoing standards, Solar Provider shall remedy at its own cost, any errors and omissions that are caused by Solar Provider's failure to comply with the above standard so that the Systems are capable of providing Solar Power at a reasonably continuous rate.

9. TAXES AND GOVERNMENTAL FEES.

- 9.01. Host Obligations. Host shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Solar Provider due to Solar Provider's sale of the Solar Power to Host (other than federal, state and local income taxes imposed upon Solar Provider), unless Host is exempt under applicable law from paying the same. Solar Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Solar Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts, or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Power. This Section 9.01 excludes taxes specified in Section 9.02.
- 9.02. Solar Provider Obligations. Subject to Section 9.01 above, Solar Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the Systems. If Host is assessed any taxes or fees related to the existence of the Systems on the Premises, Host shall immediately notify Solar Provider and Host and Solar Provider shall cooperate in contesting such assessment. Solar Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues.

10. FORCE MAJEURE EVENTS.

- 10.01. Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of reasonable due diligence (including the expenditure of reasonable sums of money). Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (a) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (b) any material, prolonged and unanticipated climatic changes affecting the Premises; (c) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (d) acts of war, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (e) strikes or labor disputes; (f) action by a Governmental Authority, including a moratorium on any activities related to this Agreement; and (g) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that such Party has exercised its reasonable efforts to obtain such Governmental Approval.
- 10.02. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach or default of this Agreement or liable for any failure to comply with terms of this Agreement (other than the failure to pay amounts due hereunder) to the extent that such nonperformance, delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this

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Article 10 shall immediately notify the other Party in writing of the existence of the Force Majeure Event and exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event. If Solar Provider claims a Force Majeure Event has occurred and requests relief from its obligations under this Agreement, the obligation of Host to make a Solar Power Payment to Solar Provider on any Quarterly Payment Date shall be reduced in the proportion that the Total Actual Quarterly Production bears to the Total Minimum Quarterly Production for the Quarterly Period in question. Such reduction in Solar Power Payments shall remain in effect until Solar Provider resumes performance of its obligations under this Agreement. Upon cessation of the Force Majeure Event, the Party claiming the Force Majeure Event shall notify the other Party in writing of the cessation or termination of said Force Majeure Event, resume performance of its obligations hereunder as soon as practicable thereafter, at which time all suspended Solar Power Payments from the Host to the Solar Provider if Host has claimed a Force Majeure shall become immediately due and payable. The Host shall not be excused under any circumstances from making payments and paying any unpaid amounts due in respect of Solar Power delivered to Host prior to the Force Majeure Event performance interruption.

- 10.03. Termination in Consequence of Force Majeure Event. If a Force Majeure Event has occurred that prevents Solar Provider's delivery of all or a portion of the Solar Power hereunder (such amount of Solar Power lost due to a Force Majeure Event, the "Lost Solar Power"), and if such occurrence has continued for a period of one hundred eighty (180) consecutive days or three hundred sixty (360) days in the aggregate during the Term (the end of such period, a "Trigger Date"), then Host shall be entitled to: (i) modify this Agreement by reducing the amount of Solar Power Host is obligated to purchase under Section 5.01 by the amount of such Lost Solar Power, or (ii) if during such Force Majeure Event the Systems cease to produce Solar Power, terminate this Agreement. The foregoing options may be exercised only upon ninety (90) days' prior written notice to Solar Provider delivered no earlier than the Trigger Date and identifying Host's selected option. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, only then shall the option selected by Host become effective. If the Agreement is terminated pursuant to this Section 10.03, neither Party shall have any liability to the other, subject to Section 19.05 (Survival), and the provisions of Section 3.03 shall be inapplicable; except that Solar Provider shall promptly pay to Host the applicable Unearned CSI Payment as of the Early Termination Date, and if this Agreement is modified to reduce Host's obligation to purchase Solar Power by the Lost Solar Power, Solar Provider shall promptly pay Host an allocable portion of the Unearned CSI Payment as of the Early Termination Date and Host shall not be excused from making any payments and paying unpaid amounts due in respect of Solar Power delivered to Host prior to the Force Majeure Event performance interruption. If a Force Majeure Event damages or destroys any portion of the Systems, Solar Provider may either (x) within two hundred seventy (270) days repair or replace the damaged or destroyed portion of the Systems and upon commencement of operation of the repaired or replaced portion of the Systems all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement, or (y) terminate this Agreement.

11. DEFAULT.

11.01. Solar Provider Defaults and Host Remedies.

(a) Solar Provider Defaults. The following events shall constitute events of defaults with respect to Solar Provider (each, a "Solar Provider Default"):

- i. Solar Provider shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) make a general assignment for the benefit of its creditors; (D) commence a voluntary case under any bankruptcy law; (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Solar Provider in an involuntary case under any bankruptcy law; or (G) take any corporate or other action for the purpose of effecting any of the foregoing;
- ii. a proceeding or case shall be commenced without the application or consent of Solar Provider in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or (B) the appointment of a trustee, receiver, custodian, or liquidator of Solar Provider under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days;
- iii. Solar Provider fails to pay Host any undisputed amount owed under this Agreement within thirty (30) days from receipt of written notice from Host of such past due amount; and
- iv. Solar Provider breaches any material term of this Agreement and (A) if such breach can be cured within thirty (30) days after Host's written notice of such breach and Solar Provider fails to so cure, or (B) Solar Provider fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; provided that the Solar Provider provides the Host with written notice of the expected time it will take to cure the breach and such timeframe is not greater than 365 days.

(b) Host's Remedies.

- i. If a Solar Provider Default described in Section 11.01(a)(i) or 11.01(a)(ii) has occurred, Host may terminate this Agreement upon fifteen (15) days' prior written notice to Solar Provider;

- ii. If a Solar Provider Default described in Section 11.01(a)(iii) or 11.01(a)(iv) has occurred and is continuing, Host may terminate this Agreement immediately upon the expiration of the respective grace periods set forth in such provisions; and
  - iii. If a Solar Provider Default described in Section 11.01(a) has occurred and is continuing, Host may exercise any other remedy it may have at law or equity or under this Agreement.
- (c) Actions to Prevent Injury. If any Solar Provider Default creates an imminent risk of damage or injury to any Person or the Host's property, then, in addition to any other right or remedy that Host may have, Host may (but shall not be obligated to) take such action as Host deems appropriate to prevent such damage or injury; including disconnecting and removing all or a portion of the Systems.

11.02. Host Defaults and Solar Provider's Remedies.

- (a) Host Default. The following events shall constitute events of defaults with respect to Host (each, a "Host Default"):
- i. Host shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) make a general assignment for the benefit of its creditors; (D) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Host in an involuntary case under any bankruptcy law; or (F) take any corporate or other action for the purpose of effecting any of the foregoing;
  - ii. a proceeding or case shall be commenced without the application or consent of Host in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or (B) the appointment of a trustee, receiver, custodian or liquidator of Host under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) or more days;
  - iii. Host breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Solar Provider's written notice of such breach and Host fails to so cure, or (B) Host fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; provided that the Host provides the Solar Provider with written

notice of the expected time it will take to cure the breach and such timeframe is not greater than 365 days:

- iv. Host fails to pay Solar Provider any undisputed amount due Solar Provider under this Agreement within thirty (30) days from receipt of written notice from Solar Provider of such past due amount; and
- v. Host refuses to sign or intentionally breaches any term of the interconnection agreement required by a Utility for interconnection of a System.

(b) Solar Provider's Remedies.

- i. If a Host Default described in Section 11.02(a)(i) or 11.02(a)(ii) has occurred, Solar Provider may terminate this Agreement upon fifteen (15) days' prior written notice to Host.
- ii. If a Host Default described in Section 11.02(a)(iii), 11.02(a)(iv) or 11.02(a)(v) has occurred and is continuing, Solar Provider may terminate this Agreement immediately upon the expiration of the respective grace periods set forth in such provisions;
- iii. If a Host Default described in Section 11.02(a) has occurred and continues beyond the expiration of grace periods thereunder, in addition to any other remedy hereunder, (A) Solar Provider may cease the provision of all Solar Services, and either (i) Solar Provider may remove the Systems from the Premises in compliance with the conditions of Section 3.06 herein or (ii) leave the Systems in place, sell Solar Power to a Utility or other Person, and collect from Host the difference between the amount paid for Solar Power from such buyer and the amount that Host is obligated to pay under this Agreement if the amount that Host is obligated to pay under this Agreement is more than the amount paid by such buyer, and (B) Solar Provider may exercise any other remedy it may have at law or equity or under this Agreement.

- (c) Actions to Prevent Injury. If any Host Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that Solar Provider may have, Solar Provider may (but shall not be obligated to) take such action as Solar Provider deems appropriate which may include disconnecting and removing all or a portion of the Systems, in compliance with the conditions of Section 3.06 herein, or suspending the supply of Solar Power to Host.

12. DISPUTE RESOLUTION.

- 12.01. Good Faith Negotiations. 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 a compromise agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party may refer the matter to arbitration in accordance with Section 12.02 except that if the Dispute involves an invoice and after ten (10) days of mutual discussion either Party believes in good faith that further discussion will fail to resolve the Dispute to its satisfaction, such Party may immediately refer the matter to arbitration in accordance with Section 12.02.

- 12.02. Binding Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Section 12.01 shall be settled by binding arbitration conducted in San Diego, California, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Arbitrator") in effect on the date that a Party gives written notice of its demand for arbitration under this Section 12.02. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and the Parties shall select a single neutral arbitrator with contract experience in the solar photovoltaic power industry and an understanding of photovoltaic systems. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) Business Days after the written demand for arbitration is provided, then the arbitrator shall be selected by the American Arbitration Association. Each Party may then commence with and engage in discovery in connection with the arbitration as provided by California law and shall be entitled to submit expert testimony and other evidence in such arbitration proceeding. The decision of the arbitrator shall be set forth in a written opinion of the arbitrator and shall be binding upon Solar Provider and Host. Any award by such arbitrator may then be enforced by Solar Provider or Host in a court of competent jurisdiction. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement and from the date of the award until paid in full at the Default Rate. Solar Provider and Host shall each bear the cost of preparing and presenting its own case; provided, however, that the Parties agree that the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The cost of the arbitration, however, including the fees and expenses of the arbitrator, shall initially be shared equally by Solar Provider and Host, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing Party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within sixty (60) calendar days of the appointment of the arbitrator. In no event shall the arbitrator have the power to award any damages limited by Article 13, which Article shall be binding upon the arbitrator.
- 12.03. Exceptions to Arbitration Obligation. The obligation to arbitrate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute or (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties.

13. LIMITATION OF LIABILITY. NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, OTHER THAN AS DESCRIBED IN THIS AGREEMENT, OR LOSSES OR DAMAGES FOR LOST REVENUE, LOST BUSINESS OR ANY BUSINESS INTERRUPTION OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, EXCEPT INDEMNITY OBLIGATIONS IN RESPECT OF PERSONAL INJURY, PAYMENT OF THE SOLAR POWER PAYMENT, AND INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, SHALL BE LIMITED, IN THE AGGREGATE, TO THE CONTRACT PRICE.

14. ASSIGNMENT.

14.01. Solar Provider Assignment. Except for the provisions in Section 14.03, Solar Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host; provided, however, that, without the prior consent of Host, Solar Provider may (i) make an Assignment to an Affiliate of Solar Provider (provided that such Assignment shall not release Solar Provider from its obligations hereunder without the consent of Host), (ii) make an Assignment through merger, consolidation or sale of all or substantially all of Solar Provider's stock or assets, (iii) make an Assignment to MP<sup>2</sup> Capital, LLC, or (iv) sell, transfer, assign or pledge its interest in the Systems or any monies due under this Agreement (provided that Host will not pay to a third party any monies owed hereunder without the advance written direction of Solar Provider). Host's consent to any other Assignment shall not be unreasonably withheld if Host has been provided with reasonable proof that the proposed assignee: (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Systems and providing services comparable to the Solar Power; and (y) has the financial capability to maintain the Systems and provide the Solar Power in the manner required by this Agreement. A direct assignee from Solar Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Solar Provider's obligations under this Agreement, including any accrued obligations at the time of the Assignment. A copy of the Assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such Assignment agreement shall be sent to Host not less than ten (10) days before the contract date of such Assignment.

14.02. Host Assignment. Host shall not assign its interests in this Agreement, nor any part thereof, without Solar Provider's prior written consent, which consent shall not be unreasonably withheld.

14.03. Financing Accommodations. Host acknowledges that Solar Provider will be lease financing the acquisition and installation of the Systems with a to be determined financial institution (the "Lease Financier") and that Solar Provider's lease obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement

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and a transfer of an ownership interest in the Systems (subject to a leaseback from the Lease Financier). Host agrees to execute and deliver Exhibit H within five (5) days following Solar Provider's written request for the same. In order to facilitate such necessary financing, Host agrees as follows:

- (a) Consent to Collateral Assignment. Host consents to the security assignment by Solar Provider to the Lease Financier of this Agreement, and a transfer of the Solar Provider's right, title and interest in and to the Systems to the Lease Financier, provided that such assignment shall not relieve the Solar Provider of its obligations hereunder.
- (b) Lease Financier's Default Rights. Notwithstanding any contrary term of this Agreement:
  - i. The Lease Financier, as collateral assignee, shall be entitled to exercise, in the place and stead of Solar Provider, any and all rights and remedies of Solar Provider under this Agreement in accordance with the terms of this Agreement. Lease Financier shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Systems.
  - ii. The Lease Financier shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Solar Provider thereunder or cause to be cured any default of Solar Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lease Financier to cure any default of Solar Provider under this Agreement or (unless the Lease Financier has succeeded to Solar Provider's interests under this Agreement) to perform any act, duty or obligation of Solar Provider under this Agreement, but Host hereby gives it the option to do so.
  - iii. Upon the exercise of remedies under its security interest in the Systems, including any sale thereof by the Lease Financier, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Solar Provider to the Lease Financier (or any Qualified Assignee of the Lease Financier as defined below) in lieu thereof, the Lease Financier shall give written notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.
  - iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Solar Provider under the United States Bankruptcy Code, at the request of Lease Financier made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Lease Financier or its Qualified Assignee having substantially the same terms and conditions as this Agreement.

- v. For purposes of this section, a "Qualified Assignee" must be a business organization with at least three (3) year's experience in the operation and management of commercial solar generating systems, provided that for any work for which a California contractor's license is required, such Qualified Assignee must have at least five (5) year's experience in the operation and management of commercial solar generating systems unless otherwise approved by Host.

(c) Right to Cure.

- i. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lease Financier prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lease Financier shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such written notice or (if longer) the periods provided for in this Agreement; provided that if such Solar Provider default reasonably cannot be cured by the Lease Financier within such period and the Lease Financier commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional thirty (30) days. The Parties' respective obligations will otherwise remain in effect during any cure period.
- ii. If the Lease Financier or its Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lease Financier, shall acquire control of Solar Provider's assets and shall, within the time periods described in Section 14.03(c)(i) above, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

15. NOTICES.

15.01. Notice Addresses. All notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Solar Provider: EcoBusiness Alliance LLC  
14668 Encendido  
San Diego, CA 92127-3807  
Attention: Charles E. Black

*With a copy to:* MP<sup>2</sup> Capital  
1101 Fifth Avenue Suite 360  
San Rafael, CA 94901  
Attention: Brad A. Bauer

*If to Host:* San Ysidro School District  
4350 Otay Mesa Road  
San Diego, CA 92173  
Attention: Karl Christensen

or at such other address as may be designated in writing to the other Party.

- 15.02. Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.
- 15.03. Notices of Default. Host will deliver to the Lease Financier, concurrently with delivery thereof to Solar Provider, a copy of each notice of default given by Host under this Agreement, inclusive of a reasonable description of Solar Provider default. No such notice will be effective absent delivery to the Lease Financier. Host will not mutually agree with Solar Provider to terminate this Agreement without the written consent of the Lease Financier.
- 15.04. Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Host by regular first class mail postage prepaid.
16. CONFIDENTIALITY.
- 16.01. Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Systems or of Host'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. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and Affiliates, Lease Financiers, and potential assignees

of this Agreement (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 16.03. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

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

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is requested by the Internal Revenue Service or other taxing authority;
- (d) is independently developed by the receiving Party; or
- (e) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16.03. Publicity. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party.

16.04. Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

17. INDEMNITY.

17.01. Solar Provider Indemnity. Solar Provider agrees that it shall indemnify and hold harmless Host, its permitted successors and assigns and their respective directors, board members, officers, members, shareholders and employees (collectively, the "Host Indemnified Parties") from and against any and all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Solar Provider's acts or omissions (collectively, the "Claims") or (b) any infringement of patents or the improper use of other proprietary rights by Solar Provider or its employees or representatives that may occur in connection with the performance of this Agreement. Solar Provider shall not, however, be required to reimburse or indemnify any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Host Indemnified Party.

17.02. Host Indemnity. Host agrees that it shall indemnify and hold harmless Solar Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Solar Provider Indemnified Parties") from and against any and all Losses incurred by the Solar Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Host's active negligence. Host shall not, however, be required to reimburse or indemnify any Solar Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Solar Provider Indemnified Party.

17.03. Indemnification Procedure.

(a) Whenever any claim arises for indemnification under this Agreement, the Person who has the right to be indemnified (the "Indemnified Party") shall notify the Person who has the indemnification obligation (the "Indemnifying Party") in writing as soon as practicable (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Party has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Party giving rise to such indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(b) If the facts giving rise to any such indemnification shall involve any actual or threatened claim or demand by any third party (including an inquiry or audit by any Governmental Authority with respect to any period in whole or in part prior to the date of this Agreement) against the Indemnified Party or any possible claim or demand by the Indemnified Party against any such third party, the Indemnifying Party shall (without prejudice to the right of the Indemnified Party to participate at its expense through counsel of its own choosing) defend such claim in the name of the Indemnified Party at the Indemnifying Party's expense and through counsel of its own choosing. The Parties shall cooperate in the

defense or prosecution thereof and shall furnish such records, information and testimony and attend such conferences and discovery as reasonably requested in connection therewith.

- (c) Notwithstanding the Indemnifying Party's obligation to assume and conduct the defense of a claim for indemnification with counsel of its choice, the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to a claim for indemnification without the prior written consent of the Indemnified Party (not to be unreasonably withheld) unless the judgment or proposed settlement involves the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party or any acknowledgment of the validity of any claim. Until the Indemnifying Party assumes the defense of a claim of indemnification arising out of a third party claim, the Indemnified Party may defend against the third party claim in any manner it may deem reasonably appropriate; provided that in no event shall the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld).
- (d) At the time that the Indemnifying Party makes any indemnity payment under this Agreement, the indemnification payment shall be adjusted such that the indemnification payment, will result in the Indemnified Party receiving an amount equal to such indemnity payment, after taking into account (i) all national, state, and local income taxes that are actually payable by the Indemnified Party with respect to the receipt of such indemnity payment, and (ii) all national, state, and local income tax deductions allowable to the Indemnified Party for any items of loss and deduction for which the Indemnified Party is being indemnified.

## 18. INSURANCE

- 18.01. Generally. Solar Provider shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) workers' compensation insurance as may be from time to time required under applicable federal and state law, and as set forth more fully in Exhibit G and (b) Commercial General Liability Insurance with limits as set forth in Exhibit G.
- 18.02. Certificates of Insurance. Solar Provider shall furnish current certificates to Host evidencing that the insurance required in Section 18.01 is being maintained (including, without limitation, a certificate delivered by Solar Provider to Host prior to the commencement of any work under this Agreement certifying (i) Solar Provider's awareness of the provisions of Section 3700 of the California Labor Code requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance thereto, and (ii) that Solar Provider shall comply with such provisions).
- 18.03. Additional Insureds. Solar Provider's insurance policy shall be written on an occurrence basis and shall include Host as an additional insured as its interests may appear as set

forth more fully in Exhibit G. Host shall carry property damage insurance on the Premises at full replacement value.

19. MISCELLANEOUS.

- 19.01. Integration; Exhibits. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement and understanding between Solar Provider and Host 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 Exhibits and Addendums attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail, and such Exhibit shall be corrected accordingly.
- 19.02. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Solar Provider and Host.
- 19.03. Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Solar Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 19.04. Limited Effect of Waiver. The failure of Solar Provider or Host 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.
- 19.05. Survival. The obligations under Sections 3.06 (Removal of Systems), Section 7.02(d) (Solar Provider Covenant), Sections 7.01(d), (e), (f) and (g) (Host Covenants), Article 9 (Taxes and Governmental Fees), Article 12 (Dispute Resolution), Article 13 (Limitation of Liability), Article 15 (Notices), Article 16 (Confidentiality), Article 19 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.
- 19.06. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without regard to principles of conflicts of law.
- 19.07. 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.

- 19.08. Relation of the Parties. The relationship between Solar Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Solar Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
- 19.09. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Solar Provider and Host and their respective permitted successors and assigns.
- 19.10. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument
- 19.11. Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 19.12. Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, except as expressly excluded in this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and expenses, expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled
- 19.13. Liquidated Damages Not Penalty. Host acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Solar Provider's actual damages resulting from the early termination of this Agreement. Host further acknowledges that Solar Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Host's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Host in lieu of Solar Provider's actual damages.
- 19.14. CSI Payment. Host and Solar Provider acknowledge and agree that for U.S. federal and California income tax purposes the payment received by Solar Provider pursuant to the California Solar Initiative Program shall be treated as an advance payment for goods by Host to Solar Provider and the Unearned CSI Payment shall equal the portion of such payment that as of any date during the Term has not, as of such date, been included in income by Solar Provider. Host and Solar Provider shall not take any position for U.S. and California income tax purposes that is inconsistent with the foregoing.

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written above.

SOLAR PROVIDER:

ECOBUSINESS ALLIANCE LLC

By:   
Name: CHARLES E. BLAK  
Title: MANAGING DIRECTOR

HOST:

SAN YSIDRO SCHOOL DISTRICT

By:   
Name: VIKI CHRISTENSEN  
Title: ASST Supt BUSINESS

Exhibit A

DESCRIPTION OF PREMISES

1. <u>Beyer Elementary</u> 2312 East Beyer Way San Ysidro, CA 92173	5. <u>Willow Elementary</u> 226 Willow Road San Ysidro, CA 92713
2. <u>La Mirada Elementary</u> 222 Avenida De La Madrid San Ysidro, CA 92173	6. <u>Ocean View Hills, K-8</u> 4919 Del Sol Blvd. San Diego, CA 92154
3. <u>Smythe Elementary</u> 1880 Smythe Avenue San Ysidro, CA 92173	7. <u>San Ysidro Middle School</u> 4345 Otay Mesa Road San Ysidro, CA 92173
4. <u>Sunset Elementary</u> 3825 Sunset Lane San Ysidro, CA 92173	8. <u>District Office</u> 4350 Otay Mesa Rd San Ysidro, CA 92173

Exhibit B

DESCRIPTION OF SYSTEM

Additional Exhibit B-X to be prepared for each System pursuant to Section 2.08.

**Location of System:**

**Total Target Capacity:** 1,633 kW DC

**Designed Capacity:**

**Scope:** Design, construct and test a utility-interconnected, roof-top solar electric (PV) systems.

**Module:**

**Inverters:**

**Structure:**

**Warranty:**

**Includes:**

**Exclusions:**

Exhibit C

SOLAR POWER PAYMENTS

Additional Exhibit C-X to be prepared for each System pursuant to Section 2.08.

The Total Solar Power Payments with respect to the Systems under the Agreement due each Quarterly Period based on the Total Target Capacity shall be in accordance with the following schedule:

Quarterly Period in Year	Quarterly Payment
1	-
2	\$ 78,750.00
3	\$ 118,750.00
4	\$ 145,000.00
5	\$ 162,500.00
6	\$ 175,000.00
7	\$ 153,750.00
8	\$ 159,131.25
9	\$ 164,700.84
10	\$ 170,465.37
11	\$ 176,431.66
12	\$ 182,606.77
13	\$ 188,998.01
14	\$ 195,612.94
15	\$ 202,459.39
16	\$ 209,545.47
17	\$ 216,879.56
18	\$ 224,470.34
19	\$ 232,326.81
20	\$ 240,458.24
21	\$ 248,874.28
22	\$ 257,584.88
23	\$ 266,600.35
24	\$ 275,931.37
25	\$ 285,588.96

Exhibit D

EARLY TERMINATION

The Total Early Termination Fee with respect to the Systems under the Agreement shall be determined in accordance with the schedule below. The Early Termination Fee applicable to each Campus for each Quarterly Period shall be the product of (i) the Designed Capacity for such System divided by the Designed Capacity for all of the Systems and (ii) the applicable Total Early Termination Fee.

Early Termination Date:	Column 1: Total Early Termination Fee (including costs of removal )	Column 2: Total Early Termination Fee (excluding costs of removal)
9/1/09 – 12/29/09	\$ 17,936,907.69	\$ 17,762,915.19
12/30/09 – 6/29/10	\$ 18,244,575.56	\$ 18,070,583.06
6/30/10 – 12/29/10	\$ 17,119,543.70	\$ 16,945,551.20
12/30/10 – 6/29/11	\$ 17,222,737.43	\$ 17,048,744.93
6/30/11 – 12/29/11	\$ 15,691,865.68	\$ 15,517,873.18
12/30/11 – 6/29/12	\$ 15,555,687.61	\$ 15,381,695.11
6/30/12 – 12/29/12	\$ 13,867,885.92	\$ 13,693,893.42
12/30/12 – 6/29/13	\$ 13,585,530.28	\$ 13,411,537.78
6/30/13 – 12/29/13	\$ 11,780,292.79	\$ 11,606,300.29
12/30/13 – 6/29/14	\$ 11,378,777.71	\$ 11,204,785.21
6/30/14 – 12/29/14	\$ 9,467,626.73	\$ 9,293,634.23
12/30/14 – 6/29/15	\$ 9,017,358.70	\$ 8,843,366.20
6/30/15 – 12/29/15	\$ 8,850,317.67	\$ 8,676,325.17
12/30/15 – 6/29/16	\$ 8,706,252.69	\$ 8,532,260.19
6/30/16 – 12/29/16	\$ 8,669,030.38	\$ 8,495,037.88
12/30/16 – 6/29/17	\$ 8,631,015.63	\$ 8,457,023.13
6/30/17 – 12/29/17	\$ 8,583,879.49	\$ 8,409,886.99
12/30/17 – 6/29/18	\$ 8,535,496.98	\$ 8,361,504.48
6/30/18 – 12/29/18	\$ 8,477,254.12	\$ 8,303,261.62
12/30/18 – 6/29/19	\$ 8,417,258.06	\$ 8,243,265.56
6/30/19 – 12/29/19	\$ 8,346,599.96	\$ 8,172,607.46
12/30/19 – 6/29/20	\$ 8,273,623.95	\$ 8,099,631.45
6/30/20 – 12/29/20	\$ 8,189,115.84	\$ 8,015,123.34
12/30/20 – 6/29/21	\$ 8,101,662.44	\$ 7,927,669.94
6/30/21 – 12/29/21	\$ 8,001,735.39	\$ 7,827,742.89
12/30/21 – 6/29/22	\$ 7,898,166.90	\$ 7,724,174.40
6/30/22 – 12/29/22	\$ 7,781,381.96	\$ 7,607,389.46
12/30/22 – 6/29/23	\$ 7,662,028.20	\$ 7,488,035.70

6/30/23 – 12/29/23	\$ 7,529,690.67	\$ 7,355,698.17
12/30/23 – 6/29/24	\$ 7,394,041.97	\$ 7,220,049.47
6/30/24 – 12/29/24	\$ 7,244,312.38	\$ 7,070,319.88
12/30/24 – 6/29/25	\$ 7,090,385.06	\$ 6,916,392.56
6/30/25 – 12/29/25	\$ 6,921,143.65	\$ 6,747,151.15
12/30/25 – 6/29/26	\$ 6,746,739.14	\$ 6,572,746.64
6/30/26 – 12/29/26	\$ 6,555,695.39	\$ 6,381,702.89
12/30/26 – 6/29/27	\$ 6,358,439.68	\$ 6,184,447.18
6/30/27 – 12/29/27	\$ 6,143,192.65	\$ 5,969,200.15
12/30/27 – 6/29/28	\$ 5,921,064.66	\$ 5,747,072.16
6/30/28 – 12/29/28	\$ 5,679,762.61	\$ 5,505,770.11
12/30/28 – 6/29/29	\$ 5,430,400.27	\$ 5,256,407.77
6/30/29 – 12/29/29	\$ 5,160,278.22	\$ 4,986,285.72
12/30/29 – 6/29/30	\$ 4,880,817.35	\$ 4,706,824.85
6/30/30 – 12/29/30	\$ 4,578,895.09	\$ 4,404,902.59
12/30/30 – 6/29/31	\$ 4,266,249.40	\$ 4,092,256.90
6/30/31 – 12/29/31	\$ 3,929,318.15	\$ 3,755,325.65
12/30/31 – 6/29/32	\$ 3,580,165.24	\$ 3,406,172.74
6/30/32 – 12/29/32	\$ 3,204,772.01	\$ 3,030,779.51
12/30/32 – 6/29/33	\$ 2,815,536.92	\$ 2,641,544.42
6/30/33 – 12/29/33	\$ 2,412,505.68	\$ 2,238,513.18
12/30/33 – 6/29/34	\$ 1,981,167.11	\$ 1,807,174.61
6/30/34	\$ 2,376,182.80	\$ 2,202,190.30

Exhibit E

MINIMUM QUARTERLY PRODUCTION AND OPTIMAL QUARTERLY PRODUCTION

Additional Exhibit E-X to be prepared for each System pursuant to Section 2.08.

The Total Minimum Quarterly Production and Total Optimal Quarterly Production with respect to the Systems under the Agreement for each Quarterly Period based on the Total Target Capacity shall be in accordance with the following schedule:

Quarterly Period in Year	Minimum Quarterly Production (in KWh)	Optimal Quarterly Production (in KWh)
1	578,250.00	706,750.00
2	575,358.75	703,216.25
3	572,481.96	699,700.17
4	569,619.55	696,201.67
5	566,771.45	692,720.66
6	563,937.59	689,257.06
7	561,117.90	685,810.77
8	558,312.31	682,381.72
9	555,520.75	678,969.81
10	552,743.15	675,574.96
11	549,979.43	672,197.08
12	547,229.54	668,836.10
13	544,493.39	665,491.92
14	541,770.92	662,164.46
15	539,062.07	658,853.64
16	536,366.76	655,559.37
17	533,684.92	652,281.57
18	531,016.50	649,020.16
19	528,361.42	645,775.06
20	525,719.61	642,546.19
21	523,091.01	639,333.46
22	520,475.56	636,136.79
23	517,873.18	632,956.11
24	515,283.81	629,791.33
25	512,707.39	626,642.37

Exhibit F

EMERGENCY CONTACT INFORMATION

Host:

Karl Christensen  
Chief Business Officer  
(619) 428-4476, x3004 (Business)  
(619) 325-9154 (Cell)

Solar Provider:

Charles E. Black  
(619) 993-6503 (Cell)  
(858) 367-8149 (Fax)

Exhibit G

SOLAR PROVIDER'S INSURANCE REQUIREMENT

Solar Provider agrees, at its own cost and expense, to keep the Systems insured for such amounts and terms and against such risks as specified in Section 18.01 and as set forth as follows:

WORKERS' COMPENSATION INSURANCE

a. Solar Provider shall provide, during the life of this Agreement, workers' compensation insurance for all of its employees engaged in work under this Agreement, on or at the Premises, and, shall also require its contractors and subcontractor to provide workers' compensation insurance for their respective employees. Any class of employee or employees not covered by a contractor or subcontractor's insurance shall be covered by the Solar Provider's insurance. In case any class of employees engaged in work under this Agreement, on or at the Premises, is not protected under the Workers' Compensation Statutes, Solar Provider shall provide or shall cause a contractor or subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Solar Provider shall file with Host certificates of its insurance protecting workers.

b. Company or companies providing insurance coverage shall be acceptable to Host, and in the following form and coverage.

1. Statutory Workers' Compensation and Employer's Liability Coverage: Solar Provider shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to Host:

- (a) The Voluntary Compensation Endorsement; and
- (b) Broad Form All States Endorsement; and
- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this Agreement; and
- (d) Waiver of Subrogation Endorsement

COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

a. Solar Provider shall procure and maintain during the life of this Agreement and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Solar Provider and Host from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Agreement, and other covered loss, however occasioned, occurring during the

policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in this Exhibit G. The limits set forth herein shall not be construed to relieve the Solar Provider from liability in excess of such coverage, nor shall it limit Solar Provider's indemnification obligations to Host, and shall not preclude the Host from taking such other actions available to Host under other provisions of this Agreement or law.

b. Solar Provider shall make certain that any and all contractors and subcontractors hired by Solar Provider are insured in accordance with this Agreement. If any contractor or subcontractor's coverage does not comply with the foregoing provisions, Solar Provider shall indemnify and hold Host harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by Host as a result thereof.

c. Company or companies providing insurance coverage shall be acceptable to the Host and authorized to conduct business in the State of California.

d. Any general liability policy provided by Solar Provider hereunder shall contain an endorsement which applies its coverage to Host, members of Host's board of trustees, and the officers, agents, employees and volunteers of Host, the State Allocation Board, if applicable, the architect, and the architect's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

e. The coverage afforded by the additional insured endorsement described in paragraph d above, shall apply as primary insurance, and any other insurance maintained by Host, the members of Host's board of trustees, or its officers, agents, employees and volunteers, or any self-funded program of Host, shall be in excess only and not contributing with such coverage.

f. Solar Provider shall notify Host in writing of the amount, if any, of self-insured retention provided under the general liability coverage, with a maximum limit of \$25,000. Host may approve higher retention amounts, based upon review of documentation submitted by Solar Provider. Such review shall take into consideration Solar Provider's net worth and reserves for payment of claims of liability against Solar Provider, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

g. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Solar Provider of that part of the indemnification contained in Article 17 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, Host may require additional coverage to be purchased by Solar Provider to restore the required limits. Solar Provider may combine primary, umbrella,

and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described in paragraphs d and e. above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the Host's rights to recover under the umbrella policy.

h. Solar Provider and Host release each other, and their respective authorized representatives, from any Claims (as defined in Article 17 hereof), but only to the extent that the proceeds received from any policy of liability insurance carried by Host or Solar Provider, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Solar Provider hereunder shall be a standard waiver of rights of subrogation against Host by the insurance company issuing said policy or policies.

i. If coverage is written on a "claims made" basis, the certificate of insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

1. The policy retroactive date coincides with or precedes Solar Provider's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).

2. Solar Provider will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.

3. If insurance is terminated for any reason, Solar Provider shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Agreement.

4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

j. Solar Provider's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Agreement, and Host may, at its option, upon giving notice, terminate the Agreement for any such default by Solar Provider, provided that Solar Provider has not cured the default within twenty (20) Business Days after receiving notice .

k. The requirements as to the types and limits of insurance coverage set forth herein to be maintained by the Solar Provider, and any approval of said insurance by the Host or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Solar Provider pursuant to the Agreement ,including, but not limited to, the provisions concerning indemnification.

l. Host shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Solar Provider to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

m. All deviations from the contractual insurance requirements stated herein must be approved in writing by Host's risk manager.

### **BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE**

a. It is the Solar Provider's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Agreement and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. Solar Provider is required to file with Host a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the special conditions insurance coverage.

b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Agreement.

2. Coverage shall include all materials stored on site and in transit.

3. Coverage shall include Solar Provider's tools and equipment.

4. Insurance shall include boiler, machinery and material hoist coverage.

c. Company or companies providing insurance coverage shall be acceptable to the Host authorized to conduct business in the State of California.

### **PROOF OF CARRIAGE OF INSURANCE**

a. Solar Provider shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the Effective Date, deliver to Host certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Solar Provider has obtained such coverage for the period of the Agreement. Solar Provider shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to Host within thirty (30) days prior to the expiration of the term of any policy required herein. Solar Provider shall permit Host at all reasonable times to inspect any policies of insurance of Solar Provider which Solar Provider has not delivered to Host.

b. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to Host stating date of cancellation. **5.6**

reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) days after date of mailing notice.”

Any notice required to be sent pursuant to this section shall be to Host’s address as shown in Article 15 (Notices).

c. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All certificates of insurance provided by Solar Provider shall name Host as additional insureds.

d. After receiving written notice of cancellation of insurance, Solar Provider shall have thirty (30) days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the Host may secure insurance at the Solar Provider’s expense.

e. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Solar Provider’s responsibility for payment of damages resulting from operations under this agreement.

### **INSURANCE LIMITS**

As provided herein, Solar Provider shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

**Comprehensive General Liability Insurance.**

with a combined single limit per occurrence  
of not less than \$5,000,000

**OR**

**Commercial General Liability and Property Damage Insurance**

(including automobile insurance) which provides limits of not less than:

- (a) Per occurrence (combined single limit)  
\$5,000,000
- (b) Systems Specific Aggregate  
\$5,000,000
- (c) Products/Completed Operations  
\$5,000,000
- (d) Personal & Advertising Injury limit  
\$1,000,000

**AND**

**Builder's Risk (or Course of Construction Coverage) Applicable/Fire Insurance for Systems Replacement Value at 100% of Agreement Amount**

**INSURANCE COVERING SPECIAL HAZARDS:** Following special hazards shall be covered by riders or riders to above-mentioned commercial liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

Automotive and truck where operated in amounts  
\$1,000,000

Material hoist where used in amounts  
\$1,000,000

Explosion, collapse & Underground (XCU) coverage  
\$1,000,000

Excess Liability Insurance coverage in the amount of  
\$1,000,000

**ADDITIONAL INSURED ENDORSEMENT:** Any general liability policy provided by Solar Provider hereunder shall contain an endorsement which applies its coverage to Host, members of Host's board of trustees, and the officers, agents, employees and volunteers of Host, the State Allocation Board, if applicable, the architect, and the architect's consultants, individually and collectively, as additional insureds.

Exhibit H

ACKNOWLEDGEMENT AND CONFIRMATION

This Acknowledgement and Confirmation, dated as of \_\_\_\_\_, 2008 (this "Acknowledgement"), is made by \_\_\_\_\_, a \_\_\_\_\_, the "Host" under that certain Solar Power and Services Agreement dated October 8, 2008(as amended from time to time, the "SPSA") with EcoBusiness Alliance LLC, a California limited liability company ( "Solar Provider"). This Acknowledgement is provided pursuant to Section 14 of the SPSA to [\_\_\_\_\_, a \_\_\_\_\_] (the "Lease Financier"), which is providing financial accommodations to Solar Provider.

The solar photovoltaic systems (the "Systems") to be installed, operated and maintained by Solar Provider pursuant to the SPSA are located at Host's facility at \*\*\*\* (the "Premises").

1. Acknowledgement of Collateral Assignment.

- (a) Host acknowledges the collateral assignment by Solar Provider to the Lease Financier, of Solar Provider's right, title and interest in, to and under the SPSA, as consented to under Section 14 of the SPSA.
- (b) The Lease Financier as such collateral assignee shall be entitled to exercise any and all rights of Lease Financiers generally with respect to the Solar Provider's interests in the SPSA, including those rights provided to Lease Financiers in Section 14 of the SPSA.
- (c) Host acknowledges that it has been advised that Solar Provider has transferred or will cause the transfer of ownership of the Systems to Lease Financier (subject to the Master Lease Agreement) and that Lease Financier has relied upon the characterization of the Systems as personal property, as agreed in the SPSA in purchasing the Systems from the Solar Provider.
- (d) Until further written notice, Host agrees to make all payments due Solar Provider under the SPSA to Lease Financier at the following address:

[\_\_\_\_\_]

2. Confirmation. Host confirms the following matters for the benefit of the Lease Financier:

- (a) To Host's knowledge, there exists no event or condition which constitutes a default, or that would, with the giving of notice or lapse of time, constitute a default, under the SPSA.

- (b) Host has approved the Systems as installed at the Premises.
- (c) Host is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the Systems as an interest adverse to Lease Financier's security interest therein.
- (d) Host acknowledge that, except as provided in the SPSA, the System will at all times (i) be and remain the personal property of the Solar Provider, Lease Financier or other such party or parties as determined by Solar Provider to facilitate the financing of the Systems, and (ii) Host will have no ownership interest or ownership attribute in the Systems.

2. Third Party Beneficiary. Host agrees that Lease Financier is a third party beneficiary to this Acknowledgement and the SPSA with full right to enforce the provisions hereof and thereof.

[ \_\_\_\_\_ ]

\_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**SOLAR PROVIDER**

**ECOBUSINESS ALLIANCE LLC**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Exhibit I

REQUIRED REBATES AND SUBSIDIES

1. Host will qualify for a federal investment tax credit in an amount equal to 30% of the total cost of the System.
2. Solar Provider has secured and will receive CSI Payments in the amount of \$0.26/kWh from San Diego Gas & Electric in accordance with the California Solar Initiative.

Exhibit J

ASSIGNMENT OF PAYMENT FORM

NSHP-2

REBATE PAYMENT CLAIM FORM/  
INITIAL APPROVAL FOR SOLAR AS OPTION  
NEW SOLAR HOMES PARTNERSHIP

[CEC use only]

Reservation # \_\_\_\_\_

Project Name \_\_\_\_\_

Lot Number \_\_\_\_\_

Address \_\_\_\_\_

Reservation Approval Date: \_\_\_\_\_

**1. Confirmation of Reservation Amount (for Solar Installed on a Specified Number of Homes)**

\_\_\_\_\_ has been granted a reservation of \$ \_\_\_\_\_ for a \_\_\_\_\_ kW solar system. The reservation will expire on \_\_\_\_\_. The system is being installed at \_\_\_\_\_ and is expected to produce \_\_\_\_\_ (kWh per year). The payment will be made to the \_\_\_\_\_.

The solar system must be completed and the claim submitted with the appropriate documentation by the deadline. Claims must be postmarked by the expiration date or the reservation will expire. This reservation is non-transferable. System must be installed at the installation address and sold to the above.

**1. Confirmation of Reservation Amount (for Solar Installed as Options)**

This is to confirm that your application to reserve financial incentives through the NSHP has been approved. The amount of funding reserved for your project is \_\_\_\_\_. This approval is based on the information you provided in your application NSHP-1, dated \_\_\_\_\_, and any subsequent information you provided.

Please complete Sections 2 and 3 only, sign below, and attach all required supporting documentation to this Form for each residential building with solar installed within 18 months, starting on the date stated above. Some changes may affect the amount of financial incentives you will ultimately be entitled to.

Once this form and all supporting documentation have been submitted and reviewed, the program will issue you a new NSHP-2 Rebate Payment Claim Form with residential building-specific information incorporated.

**2. Major System Equipment of Record (Modules, Inverters, Meters)**

Quantity	Manufacturer	Model	Cost
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**3. System Details**

Total System Price: \_\_\_\_\_  
EPBI yearly output: \_\_\_\_\_  
HERS rater output: \_\_\_\_\_  
HERS rater name: \_\_\_\_\_  
HERS rater number: \_\_\_\_\_

Lot Number: \_\_\_\_\_  
Final Address: \_\_\_\_\_  
Building Permit Signoff Date: \_\_\_\_\_

Final Equipment Seller Name and Address

Final System Installer Name and Address.

**4. Modifications**

Has any of the information in section 2 or 3 above changed? Yes No  
If yes note the changes before claiming payment.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. Payment Assignment**

*Is payment assigned to another party?*

- Yes (Please fill out all the sections below.)
- No (Please skip Section 5 and complete all others.)

**Assignment Request**

I, \_\_\_\_\_, the designated payee or authorized representative of the payee, hereby assign the right to receive payment for the above noted reservation under the NSHP to the following individual or entity and request that payment be forwarded to this individual or entity at the address below. An STD-204 should be submitted for the person/entity receiving the payment, if not already on record with the Energy Commission.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_

As the designated payee or authorized representative, I understand that I remain responsible for complying with the requirements of the NSHP and will remain liable for any tax consequences associated with the reservation payment, despite the payment's assignment. I further understand that I may revoke this payment assignment at any time prior to the Energy Commission's processing of the payment by providing written notice to the Energy Commission's Renewable Energy Office.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

**6. Signatures**

The undersigned parties declare under penalty of perjury that the information in this form and the supporting documentation submitted herewith is true and correct to the best of their knowledge. The parties further declare under penalty of perjury that the following statements are true and correct to the best of their knowledge:

- (1) The electrical generating system described above and in any attached documents meets the terms and conditions of the Energy Commission's NSHP and has been installed and is operating satisfactorily as of the date tested below.
- (2) The electrical generating system described above and in any attached documents is properly interconnected to the utility distribution grid and has or will be issued utility approval to operate the system as interconnected to the distribution grid.
- (3) The rated electrical output of the generating system, the physical location of the system, and the equipment identified were installed as stated above.
- (4) Except as noted above, there were no changes in the information previously submitted for this system.

The undersigned parties further acknowledge that they are aware of the requirements and conditions of receiving funding under the NSHP and agree to comply with all such requirements and conditions as provided in the Energy Commission's NSHP Guidebook and Overall Program Guidebook as a condition to receiving funding under the NSHP. As specified in the NSHP Guidebook, the undersigned Purchaser authorizes the Energy Commission during the term of the NSHP to exchange information on this form with the electric utility servicing the system in order to verify compliance with the NSHP requirements. If a copy of the utility "letter of authorization to operate" the system is not submitted with this payment claim form, the undersigned Builder understands that he/she is obligated to submit a copy of this letter to the Energy Commission once it is received.

*Builder*

*Seller*

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

and Title: \_\_\_\_\_

and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Mail complete payment claim to:  
California Energy Commission  
NSHP, Payment Claim  
1516 Ninth Street (MS-45)  
Sacramento, CA 95814-5512

Documents to Attach:

- Final Building Permit Signoff
- Proof of Payment of Final Invoices
- Ten-Year Warranty Form
- Final EPBI/HERS Paperwork
- Letter of Authorization to Interconnect

(For options) Mail update to:  
California Energy Commission  
NSHP, Options Update  
1516 Ninth Street, MS-45  
Sacramento, CA 95814-5512

Documents to Attach:

- EPBI Calculations
- Payee Data Form

Exhibit K

UNEARNED CSI PAYMENT

Columns A and C will be completed in accordance with Section 2.08

The Unearned CSI Payment with respect to the System under the Agreement shall equal to the sum of all California Solar Initiative Program performance based incentive payments received with respect to the System as of the date the Unearned CSI Payment is due, minus the sum of all amounts in Column E in respect of periods (or portions of periods) prior to the date the Unearned CSI Payment is due.

	A	B	C	D	E
Force Majeure Termination Occurs in Calendar Year:	CSI Payment Allocated to the Calendar Year (or Portion Thereof)	Actual Production for the Calendar Year (or Portion Thereof)*	Minimum Production for the Calendar Year (or Portion Thereof)	If Column B is less than Column C, divide Column B by Column C*	Less or Column A or Column A multiplied by Column D*
2009					
2010					
2011					
2012					
2013					
2014					
2015					
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					
2025					
2026					
2027					
2028					
2029					

\* This amount to be filled in annually.

	A	B	C	D	E
Force Majeure Termination Occurs in Calendar Year:	CSI Payment Allocated to the Calendar Year (or Portion Thereof)	Actual Production for the Calendar Year (or Portion Thereof)*	Minimum Production for the Calendar Year (or Portion Thereof)	If Column B is less than Column C, divide Column B by Column C*	Less or Column A or Column A multiplied by Column D*
2030					
2031					
2032					
2033					
2034					
2035					

Exhibit L

SAFETY AND SECURITY REGULATIONS

**FINGERPRINTING**

a. **Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students.**

If the Host determines based on the totality of the circumstances concerning the Construction Work that Solar Provider and Solar Provider's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Agreement, the Solar Provider acknowledges that Solar Provider is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Solar Provider and/or Solar Provider's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Solar Provider shall, at Solar Provider's own expense, (a) install a physical barrier to limit contact with students by Solar Provider and/or Solar Provider's employees, or (b) provide for the continuous supervision and monitoring of the Solar Provider and/or Solar Provider's employees by an employee of the Solar Provider who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Solar Provider and Solar Provider's employees by a Host employee.

b. **Contracts for Construction, Reconstruction Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students.**

If the Host determines based on the totality of the circumstances concerning the Construction Work that the Solar Provider and Solar Provider's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Agreement, the Solar Provider acknowledges that Solar Provider is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Solar Provider and/or Solar Provider's employees on a school site: (1) Solar Provider and/or Solar Provider's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Solar Provider and/or Solar Provider's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Solar Provider and/or Solar Provider's employees shall not change locations without contacting the school office; (4) Solar Provider and Solar Provider's employees shall not use student restroom facilities; and (5) If Solar Provider and/or Solar Provider's employees find themselves alone with a student, Solar Provider and Solar Provider's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

Host Determination of Fingerprinting Requirement Application is as follows:

The Host has considered the totality of the circumstances concerning the Construction Work and has determined that the Solar Provider and Solar Provider's employees are subject to the requirements of Education Code section 45125.2.

**FIRST ADDENDUM TO SOLAR POWER AND SERVICES  
AGREEMENT DATED OCTOBER 8, 2008**

This First Addendum, dated as of March 26, 2015, is entered into by and between the San Ysidro School District ("Host" or "District") and Manzana Energy, Inc., a California corporation ("Solar Provider") (collectively, "the Parties") to amend and supplement that certain Solar Power And Services Agreement, dated October 8, 2008 ("SPSA"), by and between the District and Solar Provider, as follows:

1. **ENTIRE AGREEMENT.** The SPSA, as amended and supplemented by this First Addendum, constitutes the entire agreement and understanding of the Parties with respect to the matters therein and herein stated. All terms, conditions, and provisions of the SPSA, other than amended, remain in full force and effect.

2. **CONTINGENCIES.** This First Addendum is subject to the following contingencies and preconditions, as follows:

- a. That Host has received a positive budget certification from San Diego County Office of Education ("SDCOE");
- b. The SPSA and its funding has been approved by SDCOE, pursuant to its statutory authority, if any, or by operation of law;
- c. An independent auditor chosen by the District has appraised the value of the proposed Systems.

2. **EFFECTIVE DATE.** The "Effective Date", as defined on page 3 of the SPSA is amended to be the date of this First Addendum.

3. **PREAMBLE.** "EcoBusiness Alliance LLC, a California limited liability company d/b/a Manzana Energy" is deleted and replaced by "Manzana Energy, Inc., a California corporation". Solar Provider warrants and represents that it has all interests and rights to enter into this Agreement.

4. **EARLY TERMINATION.** Paragraph 3.03 is amended as follows:

3.03 **EARLY TERMINATION.** Host may terminate this Agreement prior to the Expiration Date for any reason upon written notice pursuant to this Paragraph. Upon such termination notice, the following shall occur: (a) the Solar Provider shall complete the installation and commissioning of the Systems; (b) Host shall pay, as liquidated damages, the corresponding Early Termination Fee amount as set forth in the amended Exhibit D of the SPSA; and (c) Host shall no longer pay the Solar Power Payments per Paragraph 6.01 in the SPSA.

Upon Host's completed payment(s) to Solar Provider of the Early Termination Fee as provided for in the Section, the Parties will promptly execute all documents necessary to (A) cause title to such System to pass to Host, free and clear of any Liens immediately subsequent to the Operations Date, and (B) assign all warranties and any service and/or maintenance contracts for such System to Host. In the event of an Early Termination, the assignment of the California Solar Initiative (CSI) rebates, if any, shall remain with the Solar Provider.

Early Termination Fee (ETF) payments due under this section in the event of an Early Termination before the Operations Date shall be according to the following schedule:

ETF Payment Due Date	Percentage of ETF Due
Due upon Notice to Terminate SPSA	15%
Due upon Project Mobilization On Site	30%
Due upon Initiation of Construction Work	10%
Upon Project Progress Verification 1	10%
Upon Project Progress Verification 2	10%
Upon Project Progress Verification 3	10%
Upon Final Project Progress Verification	10%
Project Retention released on Operations Date	5%
TOTAL	100%

**5. PURCHASE OPTION.** Paragraph 3.04 shall be deleted.

**6. ADDITIONAL CAPACITY.** In accordance with Paragraph 5.02 of the Agreement, the Total Target Capacity of the systems should offset at least 80% of the Host's annual energy costs. To achieve that target given the Host's energy costs at the time of this Addendum, the Total Target Capacity in the Agreement shall be increased by an additional minimum annual production of 1,450,000 kilowatt hours ("KWh") in Year 1. The price of the added capacity will not exceed a GMAX of \$6,000,000. This GMAX shall be added to amended Exhibit D as Early Termination Fee 2. Final cost budgets which lower the overall price for this additional capacity from the GMAX price shall be reflected as an offset in the Solar Payments 2 (SP2) in amended Exhibit C and in the Early Termination Fee 2 (ETF2) in amended Exhibit D.

The final Designed Capacity shall be amended, if needed, based on final approved building plans from the California Division of the State Architect (DSA) in accordance with Paragraph 2.07 of the SPSA. The additional capacity shall be installed at the following sites:

1. La Mirada Elementary School (*Systems may be located on shade canopies on the campus and/or parking lots*)
2. Smythe Elementary School (*Systems may be located on shade canopies on the campus and/or parking lots*)

3. Ocean View Hills School (*Systems may be located on shade canopies on the campus and/or parking lots*)
4. San Ysidro Middle School (*Systems may be located on shade canopies on the campus and/or parking lots*)
5. Vista Del Mar (*Systems may be located on shade canopies on the campus and/or parking lots*)

In the event the final Designed Capacity is less than 3,763,000 (“KWh”), the final cost of the Solar Payments shall be reduced proportionally to the percentage of actual production by multiplying the total Solar Payments in Amended Exhibit C by the ratio of the actual production divided by 3,763,000. In addition, the final cost of the ETFs in amended Exhibit D shall be reduced proportionally to the percentage of actual production by multiplying the total ETFs in Amended Exhibit D by the ratio of the actual production divided by 3,763,000.

**7. EXHIBIT A.** SPSA Exhibit A is amended as follows:

**DESCRIPTION OF PREMISES**

1. District Office Administration Center  
(System to be located on vacant property North of bus maintenance yard and connected to various meters within the DO property)
2. Willow School  
(Systems may be located on shade canopies on the campus and/or parking lots)
3. Sunset School  
(Systems may be located on building roof locations on the campus and/or on shade canopies within the staff parking lot located across Sunset Lane from the campus)
4. Additional sites shall be those included in Paragraph 6 of the First Addendum to the SPSA.

**8. EXHIBIT B. DESCRIPTION OF SYSTEM.** SPSA Exhibit B is amended as follows:

**Exhibit B**

**DESCRIPTION OF SYSTEMS**

Solar Provider shall design, construct, test, and maintain photovoltaic solar energy systems at the Premises as described in Exhibit A. The total system output shall be as described in amended Exhibit E.

9. EXHIBIT C. SOLAR PAYMENTS. SPSA Exhibit C is amended as follows:

EXHIBIT C

SOLAR PAYMENTS

The Quarterly Payment (QP) under the Agreement due each Quarterly Period shall be the total of Quarterly Payment 1 (QP1) and Quarterly Payment 2 (QP2). QP1 shall encompass the system output included in the SPSA as approved on October 8, 2008. QP2 shall encompass the system output approved in the First Addendum to the SPSA. The total QP shall be in accordance with the following schedule:

Period	Quarterly Payment 1	Quarterly Payment 2
YEAR 1	0	0
YEAR 2	78,500.00	47,514.05
YEAR 3	118,750.00	71,876.35
YEAR 4	145,000.00	87,764.81
YEAR 5	162,500.00	98,357.11
YEAR 6	175,000.00	105,923.04
YEAR 7	153,750.00	93,060.96
YEAR 8	159,131.25	96,318.09
YEAR 9	164,700.84	99,689.23
YEAR 10	170,465.37	103,178.35
YEAR 11	176,431.66	106,789.59
YEAR 12	182,606.77	110,527.23
YEAR 13	188,998.01	114,395.68
YEAR 14	195,612.94	118,399.53
YEAR 15	202,459.39	122,543.51
YEAR 16	209,545.47	126,832.54
YEAR 17	216,879.56	131,271.67
YEAR 18	224,470.34	135,866.18
YEAR 19	232,326.81	140,621.50
YEAR 20	240,458.24	145,543.25
YEAR 21	248,874.28	150,637.27
YEAR 22	257,584.88	155,909.57
YEAR 23	266,600.35	161,366.41
YEAR 24	275,931.37	167,014.23
YEAR 25	285,588.96	172,859.73

10. **EXHIBIT D.** SPSA Exhibit D shall be amended as follows:

EXHIBIT D

EARLY TERMINATION

The Early Termination Fee (ETF) referenced within the Agreement shall be in accordance with the following schedule starting from the Operations Date, and each year thereafter. The applicable fee shall be calculated as of the date of Early Termination notice. If an Early Termination should occur before the Operations Date, the Early Termination Fee shall be the amount in Year 1 of this Exhibit. ETF 1 encompasses the Systems capacity and output contained in the SPSA as approved October 8, 2008. ETF 2 encompasses the capacity and output approved in Addendum 1 to the SPSA. The total ETF for each year shall be the total of the ETF 1 and ETF 2 for the relevant Period.

Period	ETF 1	ETF 2
YEAR 1	\$17,762,915.19	6,000,000
YEAR 2	\$16,945,551.20	5,640,000
YEAR 3	\$15,517,873.18	5,301,600
YEAR 4	\$13,693,893.42	4,983,504
YEAR 5	\$11,606,300.29	4,684,494
YEAR 6	\$9,293,634.23	4,403,424
YEAR 7	\$8,676,325.17	4,139,219
YEAR 8	\$8,495,037.88	3,890,866
YEAR 9	\$8,409,886.99	3,657,414
YEAR 10	\$8,303,261.62	3,437,969
YEAR 11	\$8,172,607.46	3,231,691
YEAR 12	\$8,015,123.34	3,037,789
YEAR 13	\$7,827,742.89	2,855,522
YEAR 14	\$7,607,389.46	2,684,191
YEAR 15	\$7,355,698.17	2,523,139
YEAR 16	\$7,070,319.88	2,371,751
YEAR 17	\$6,747,151.15	2,229,446
YEAR 18	\$6,381,702.89	2,095,679
YEAR 19	\$5,969,200.15	1,969,938
YEAR 20	\$5,505,770.11	1,851,742
YEAR 21	\$4,986,285.72	1,740,637
YEAR 22	\$4,404,902.59	1,636,199
YEAR 23	\$3,755,325.65	1,538,027
YEAR 24	\$3,030,779.51	1,445,746
YEAR 25	\$2,202,190.30	1,359,001

11. AMENDED EXHIBIT E. SPSA Exhibit E shall be amended as follows:

EXHIBIT E

MINIMUM QUARTERLY PRODUCTION

The Total Minimum Quarterly Production (QtProd) with respect to the Systems under this Agreement for each Quarterly Period based on the Total Target Capacity shall be the total of Quarterly Production 1 (QtProd1) and Quarterly Production 2 (QtProd2). QtProd1 shall encompass the system output included in the SPSA as approved on October 8, 2008. QtProd2 shall encompass the system output approved in the First Addendum to the SPSA. The total QtProd shall be in accordance with the following schedule:

Period	Quarterly Production 1	Quarterly Production 2
YEAR 1	578,250	362,500
YEAR 2	575,359	360,688
YEAR 3	572,482	358,884
YEAR 4	569,620	357,090
YEAR 5	566,771	355,304
YEAR 6	563,938	353,528
YEAR 7	561,118	351,760
YEAR 8	558,312	350,001
YEAR 9	555,521	348,251
YEAR 10	552,743	346,510
YEAR 11	549,979	344,777
YEAR 12	547,230	343,054
YEAR 13	544,493	341,338
YEAR 14	541,771	339,632
YEAR 15	539,062	337,933
YEAR 16	536,367	336,244
YEAR 17	533,685	334,563
YEAR 18	531,016	332,890
YEAR 19	528,361	331,225
YEAR 20	525,720	329,569
YEAR 21	523,091	327,921
YEAR 22	520,476	326,282
YEAR 23	517,873	324,650
YEAR 24	515,284	323,027
YEAR 25	512,707	321,412

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**12. NOTICE ADDRESSES.** Paragraph 15.01 is amended as follows:

15.01 Notice Addresses. All notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Solar Provider: Manzana Energy, Inc.  
2127 Olympic Pkwy, Ste 1006  
Chula Vista, CA 91915  
Attention: President & CEO

With a copy to: Mulvaney Barry  
401 West A Street, 17th Floor  
San Diego, CA 92101  
Attention: Patrick Prindle

If to Host: San Ysidro School District  
4350 Otay Mesa Road  
San Diego, CA 92173  
Attention: Superintendent

**13. EMERGENCY CONTACT INFORMATION.** SPSA Exhibit F is amended as follows:

Emergency Contacts

PROVIDER: Manzana Energy, Inc.  
619-292-8008

HOST: Superintendent's office  
619-428-4476

**14. Representations and Warranties.** Each person signing this First Addendum represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this First Addendum. Each party further represents and warrants to the other that the execution and delivery of this First Addendum, and the performance of such party's obligations hereunder, have been duly authorized and that this First Addendum is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**15. Surety Bond.** Solar Provider shall purchase and maintain, at its own expense, a surety bond, that is acceptable to the Host.

**16. No Other Changes.** All provisions of the SPSA not specifically modified or changed herein remain in full force and effect.

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Manzana Energy, Inc.

San Ysidro School District

\_\_\_\_\_  
By: Arturo Castañares,  
President

\_\_\_\_\_  
By: Edward Velazquez  
Interim Superintendent

Date: \_\_\_\_\_, 2015

Date: \_\_\_\_\_, 2015