

AGREEMENT FOR SOLAR ENERGY GROUND LEASE

THIS AGREEMENT FOR SOLAR ENERGY GROUND LEASE (Agreement) is made and entered into on January 1, 2022 (Effective Date) by and between the City of Fresno (Lessor or City), a California municipal corporation, and Fresno Community Solar Developers, LLC. (Lessee), a California limited liability company.

RECITALS

A. Lessor is the owner of certain real property located at 2865 S. Cornelia Avenue, in the City of Fresno, Fresno County, California (APN 327-030-22ST), hereinafter referred to as "Land."

B. Lessee is in the business of developing, siting, operating, and maintaining solar energy generation and transmission facilities. On March 2, 2020, Lessor granted Lessee the exclusive option and right to lease up to 158 acres of the Land. That Option was amended on April 14, 2021 and expires on December 31, 2021.

C. Lessee has exercised the Option to lease 74.41 acres of the Land for the development, construction, operation, maintenance, repair, and replacement of a solar energy generation facility.

D. Lessor is willing to lease 74.41 acres of the Land on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is hereby conclusively established, Lessor and Lessee hereby agree as follows:

1. Grant by Lessor; Lease; Leased Premises.

(a) Lessor agrees to lease the "Leased Premises," as defined herein to Lessee, and Lessee hereby agrees to lease the Leased Premises from Lessor, subject to the terms and conditions set forth in this Agreement.

(b) The "Leased Premises," as used herein, is an area consisting of approximately 74.41 acres of the Land, as is legally described in Exhibit A attached hereto. During the Construction Period, as defined herein, Lessor agrees to lease Lessee an additional 5 acres for construction staging and laydown, for a total of 79.41 acres.

2. Lease Term.

(a) The lease shall commence on the Effective Date of this Agreement and shall continue for the entire "Term" subject to earlier termination or modification in accordance with this Agreement.

(b) The Construction Period will begin on the Effective Date and expire on the earlier of (i) May 25, 2023, or (ii) the "Operations Date." The Operations Date will be the date upon which the System begins delivering electrical energy under the power purchase agreement with the offtaking utility. Lessee shall provide Lessor at least thirty (30) days' notice prior to the expected Operations Date and shall provide notice to Lessor no later than five (5) days after the actual Operations Date.

(c) Unless the Lease is terminated, the "Initial Term" shall commence automatically upon the expiration of the Construction Period and shall continue for twenty (20) years, subject to earlier termination or modification in accordance with this Agreement. If the Initial Term does not commence on the first day of a month, then the Initial Term shall not end until the last day of the last month of the Initial Term.

(d) Upon expiration of the Initial Term, Lessee shall have the option to exercise a renewal term of 10 years (First Renewal Term). Lessee shall exercise the First Renewal Term by providing Lessor with written notice no later than sixty (60) days prior to the expiration of the Initial Term. Lessee shall also have the option to exercise a subsequent renewal term of 10 years (Second Renewal Term). Lessee shall inform Lessor of its intent to exercise the Second Renewal Term by providing Lessor with written notice no later than sixty (60) days prior to the expiration of the First Renewal Term. The Second Renewal Term will be effective upon Lessor's written consent. The First and Second Renewal Terms shall be subject to all the terms and provisions of this Agreement.

(e) The Construction Period, the Initial Term, and any Renewal Terms, if exercised, shall be collectively referred to as the "Term".

3. Termination of Agreement.

(a) Without limiting any other termination rights of Lessee as set forth in this Agreement, Lessee shall have the right to terminate this Agreement as to all or any part of the Leased Premises as follows: (i) at any time during the Construction Period, upon Lessee's determination, in Lessee's sole and absolute discretion, that it would not be commercially reasonable to proceed with the construction and operation of the System, or (ii) at any time during the Term pursuant to the failure of any condition described in Section 3(b) below. If this Agreement is terminated as to only a portion of the Leased Premises, this Agreement shall remain in effect as to the remainder of the Leased Premises.

(b) Without limiting any other termination rights of Lessee as set forth in this Agreement, during the Term, Lessee's obligation to pay Rent and continue this Agreement is at all times expressly subject to satisfaction of each of the following conditions: (i) Lessee's obtaining and maintaining all necessary or required approvals from state, federal, and local authorities, (ii) Lessee's obtaining and maintaining any agreement that is necessary for the operation of the System and the sale and delivery of the electricity generated by it, including without limitation an interconnection agreement

and power purchase agreement with the applicable utility company, and (iii) Lessee's ability to continuously operate the System and utilize the Leased Premises for the Intended Use. If any of the foregoing conditions are not satisfied at any time during the Term, Lessee shall have the right to terminate this Agreement upon 30 days written notice to Lessor.

(c) Notwithstanding any provisions to the contrary, if Lessee terminates this Agreement during the Construction Period, Lessee agrees to pay Lessor an amount equal to \$482.00 per acre of the Leased Premises, less any amounts paid to Lessor during the Construction Period and restore the Leased Premises to the original condition. During the Construction Period, as defined herein, the Leased Premises will include an additional 6 acres, for a total of 95.1 acres.

4. Rent Commencement; Rent; Payment Schedule; Rent Escalation.

(a) Lessee's obligation to pay "Rent" shall commence on the Effective Date of this Agreement.

(i) During the Construction Period, Lessee shall pay Rent in the amount of \$83.33 per acre, per month for each of the 74.41 acres of the Leased Premises. In addition to Rent paid for the Leased Premises, during the Construction Period Lessee shall also pay Rent in the amount of \$83.33 per acre, per month for each of the 5 acres used for construction staging and laydown.

(ii) During the Initial Term, Lessee shall pay Rent in the amount of \$1,000 per acre, per year for each of the 74.41 acres of the Leased Premises.

(b) Rent during the Construction Period shall be payable in advance on the first (1st) day of each month. The first installment of Rent shall be due on the Lease Commencement Date and shall be prorated, on a daily basis, for the period between the Lease Commencement Date and the first Rent Payment Date.

(c) During the Initial Term, Rent shall be payable in advance in semi-annual installments due on each January 15 and July 15 during the Term (Rent Payment Date). The first installment of Rent during the Initial Term shall be due on the Effective Date and shall be prorated, on a daily basis, for the period between the Effective Date and the first Rent Payment Date. For the avoidance of doubt, Rent payable for any partial period shall be prorated for the number of days in such partial period.

(d) During the Renewal Terms, Lessee will pay "Renewal Term Payments" in lieu of Rent. The Renewal Term Payments will be an amount equal to twenty percent (20%) of Lessee's then current "Distributable Cash Equity". Lessee shall pay the Renewal Term Payments annually to Lessor no later than February 15th of each year of a Renewal Term, such payment to be applicable to the prior calendar year, and such payment to be prorated for any partial year. "Distributable Cash" Equity shall mean

Lessee's pre-tax gross revenue, less any operating expenses and debt service associated with the System.

(e) If any installment of Rent or a Renewal Term Payment is not received by Lessor within ten (10) days of the respective due date, Lessee will pay a late fee to Lessor in the amount of five percent (5%) of the unpaid delinquent Rent or Renewal Term Payment amount, and Lessee shall pay interest of one and one-half percent (1.5%) per month on the unpaid balance due from the due date until the principal and the interest is paid in full.

5. **Use and Occupancy.** During the Term, Lessee shall use the Leased Premises for the development, construction, operation, maintenance, repair, and replacement of the System (Intended Use), including all lawful uses that are incidental or related to, or not inconsistent with, the Intended Use. The "System" shall mean one or more facilities for the generation, collection, conversion, storage, interconnection, transmission and distribution of solar electricity, including, without limitation, solar panels and other components of a solar photovoltaic power array, other facilities for the conversion of solar energy into electricity and the storage of electricity, and related equipment and facilities, including, without limitation, overhead and underground power transmission lines, poles, anchors, support structures, overhead and underground cables (including but not limited to fiber optic cables for communications and data transmission purposes), substations, distribution and interconnection facilities, and associated equipment and appurtenances, and roads, driveways, fences, gates, signage and other security devices, and utility and other improvements, equipment, and facilities servicing or supporting the same. On an annual basis during the Term of the Lease, FCSD shall provide reports to City detailing total power generated from system.

During the Term, Lessee shall comply with all federal, state, county, and municipal laws, ordinances, regulations, and requirements applicable to Lessee's use of the Leased Premises.

Lessee's use and occupancy of the Leased Premises shall be consistent with the final Site Plan attached as Exhibit B.

6. **Lessee Documents.** Records of Lessee's expenses and revenues shall be kept on a generally recognized accounting basis and, upon commencement of the First Renewal Term, shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after expiration of this Agreement or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Lessee pertaining to operation and maintenance of the System, including but not limited to, any third party contracts relating to the System, shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

7. **Workforce Development.** Lessee will engage with a workforce development provider to provide hands-on utility scale solar photovoltaic training to citizens from disadvantaged census tracts located in the City of Fresno interested in gaining skills to obtain employment in the solar industry. The training program will not exceed \$95,000. Lessee agrees to voluntarily abide by the City of Fresno's local hiring goals targeted toward hiring for journeymen and apprentices residing in economically disadvantaged areas.

8. **Expense Restrictions.** Lessee shall restrict all corporate expenditures to costs and expenses directly related to the System, which may include, but shall not be limited to, operation and maintenance costs, insurance costs, capital expenditures to repair and upgrade and/or increase the value of the System, taxes, travel expenses to and from the System, and principal and interest payments on debt.

9. **Lessee's Property.**

(a) The System and its constituent parts, together with any and all improvements or other features constructed on, or personal property installed or placed on the Leased Premises by or for Lessee, including without limitation, machinery, fixtures, trade fixtures, equipment, racking, inverters, cables, solar panels and other personal property (collectively, "Lessee's Property") are personal property within the meaning of Article 9 of the UCC (as defined in Section 36 below) regardless of the manner of attachment to the Leased Premises. Lessee's Property is and shall at all times during the Term be deemed to be the property of Lessee (subject to any Transfer in accordance with Section 24(a)), to be removed at Lessee's expense upon the expiration or earlier termination of the Term in accordance with Section 12. The creation, attachment and perfection of security interests in Lessee's Property shall be governed exclusively by Article 9 of the UCC.

(b) Lessor hereby waives any lien, security interest, rights to levy, distraint, possession, Lessor's lien and all other claims of any nature that Lessor now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to Lessee's Property, if any, and Lessor shall not cause the creation of, or attachment to, Lessee's Property of any liens (including mechanics' and judgment liens) or other encumbrances.

(c) Lessor further agrees to notify any purchaser of the Land and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing waiver of Lessor's lien rights, which shall be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Lessee and any Additional Notice Party (as defined in Section 25).

(d) The parties hereto acknowledge that the Leased Premises consist of land only and do not include Lessee's Property. Any claim to a lien or encumbrance upon the Leased Premises, arising from any act or omission of Lessor, shall accrue only against

the real estate owned by Lessor, and not against Lessee's Property, and shall be subject to this Agreement. If any such lien or encumbrance shall be filed against Lessee's Property as a result of Lessor's actions, Lessor shall, without cost or expense to Lessee, cause such lien or encumbrance to be discharged of record by payment, statutory lien release bond, court order or otherwise as provided by law. Lessor shall not permit any sale, foreclosure or forfeiture of the Leased Premises by reason of nonpayment of a lien caused by Lessor or anyone claiming by or through Lessor. Lessor shall immediately notify Lessee of, and send Lessee a copy of, any notice Lessor receives claiming that Lessor is late or in default regarding any obligation Lessor has to pay money to any lender or third party holding a mortgage or other lien affecting the Leased Premises.

(e) Without limiting the definition of Lessee's Property set forth in Section 9(a) above, Lessee's Property shall include, without limitation, all output and products of the System, including, without limitation, the electrical output, the Environmental Attributes, and the Solar Incentives therefrom or associated therewith. The term "Environmental Attributes" shall include, without limitation, any renewable energy credits or certificates, emissions reduction credits, emissions allowances, carbon trading credits, green tags, and tradable renewable credits. The term "Solar Incentives" shall include, without limitation, any tax credit, benefit, or incentive for alternative energy expenditure established by any federal, state, or local government for the production of electricity, including any federal, state, or local accelerated depreciation, installation, or production-based incentives, investment tax credits, and subsidies. Lessee's Property shall also include, without limitation, all insurance and condemnation proceeds (or payments in lieu thereof) in respect of Lessee's Property.

10. Utilities; Maintenance. During the Term, Lessee shall (a) arrange and pay for all public utility services used on the Leased Premises by Lessee, and (b) be responsible for the repair and maintenance of the Leased Premises in a manner that does not create a public nuisance and shall provide dust control, mowing, and weed control as is necessary to keep the Leased Premises in reasonably satisfactory state of repair.

11. Alterations and Construction Rights. During the Term, Lessee may, at its expense and without the prior consent of Lessor, remove and/or alter any existing improvements on the Leased Premises, and make any alterations, additions, improvements and changes to the Leased Premises that Lessee deems reasonably necessary in the operation of its business and the Intended Use, including, without limitation, installation of the System, fencing, security devices and/or signage, and excavating, grading, leveling or otherwise modifying the Leased Premises. Such alterations, additions, improvements and changes shall be made in compliance with applicable Laws.

Lessee shall be solely responsible for determining whether payment of prevailing wage is required. Lessee shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to Lessor) the Lessor against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Lessee, its contractors and subcontractors) to pay

prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations.”

Lessee will comply with all applicable laws and permits in altering or improving the Leased Premises, and its use and occupancy of the Lease Premises. This Lease does not obligate Lessor to issue any discretionary approvals sought by Lessee in connection with this Lease.

12. Effect of Termination; Decommissioning Bond.

(a) Within one (1) year after the expiration or earlier termination of the Term, Lessee shall completely remove all of Lessee's Property and vacate the Leased Premises, and Lessee shall be granted such access and other rights in or to the Land as may be reasonably necessary to allow Lessee to complete the same, without obligation for the payment of Rent therefor. The removal of Lessee's Property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Leased Premises to be used for the same purposes existing as of the Effective Date, and Lessee shall leave the Leased Premises free of any conditions created by Lessee which present a current unreasonable risk of harm to Lessor or members of the public. Except as provided in Section 3(c), Lessee shall have no obligation to restore any improvements demolished and removed from the Leased Premises and shall not be required to replant any trees or farm crops removed in connection with the construction of the System.

(b) If Lessee fails to vacate the Leased Premises in accordance with this Section 12, Lessor shall be entitled to holdover rent or Renewal Term Payments in the amount equal to one hundred twenty-five percent (125%) of the Rent or Renewal Term Payment for the final year of the Term, prorated on a daily basis, for each day that Lessee fails to so vacate the Leased Premises. Any such holdover shall be construed as a tenancy from month-to-month. This Section 12 shall survive the termination of this Agreement.

Alternatively, upon the expiration of the Second Renewal Term, the Lessor, at its sole election, may take over the System and continue to receive solar energy from the System for Lessor's purposes. If Lessor so elects, it will notify the Lessee of its election no less than one year prior to the expiration of the Second Renewal Term. If Lessor elects to take over the System, all System operations, maintenance, liability, equipment removal and land restoration will become the obligation of the Lessor and Lessee will be relieved of all of the forgoing requirements.

(c) Lessee shall purchase a bond, letter of credit or other surety instrument for the full cost of decommissioning the System within sixty (60) days after either of the following events: (i) the power purchase agreement between Lessee and the offtaking utility has no more than five (5) years remaining in its initial term; or (ii) the offtaking utility declares bankruptcy or defaults under the terms of the power purchase agreement. The amount of the bond shall be determined by an independent engineer, at

Lessee's expense, reasonably experienced at calculating decommissioning costs for solar photovoltaic projects in the State of California.

13. **Fire or Other Casualty.** If during the Term, all or part of the Leased Premises or Lessee's Property are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Lessee's sole and absolute discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Leased Premises and/or Lessee's Property, as applicable, then Lessee may terminate this Agreement and the Lease created hereby by providing Lessor with written notice of the same and vacating the Leased Premises in compliance with Section 12 hereof. Lessee, or its successor in interest, shall be entitled to one hundred percent (100%) of any proceeds from casualty insurance policies maintained by Lessee.

14. **Condemnation.**

(a) If all or part of the Leased Premises and/or Lessee's Property shall be subject to condemnation, the exercise of the power of eminent domain, or other governmental taking (the foregoing, collectively, a "**Taking**") with the result that, in Lessee's sole and absolute discretion, the unaffected portion of the Leased Premises is insufficient or otherwise unsuitable for Lessee's continued use of the Leased Premises for the Intended Use or such other use as existed at the time of the Taking (a "**Total Taking**"), then Lessee may terminate this Agreement by providing Lessor with written notice of the Total Taking, this Agreement shall terminate effective as of the date set forth in such notice, and Lessee shall vacate the Leased Premises in accordance with Section 12.

(b) If a part of the Leased Premises and/or Lessee's Property shall be subject to a Taking that, in Lessee's sole and absolute discretion, does not constitute a Total Taking (a "**Partial Taking**") then (i) concurrently with such Taking this Agreement shall terminate with respect to the affected portion of the Leased Premises, which Lessee shall vacate in accordance with Section 12, (ii) this Agreement shall continue in full force and effect with respect to the unaffected portion of the Leased Premises and (iii) the Acreage shall be reduced for each Acre (or portion thereof) subject to the Taking, and the Rent shall be reduced accordingly as of the date of such Taking. For purposes of clarification only, Lessee shall be entitled to remove Lessee's Property from any portion of the Leased Premises that is subject to a Taking.

(c) Lessee shall have the right but not the obligation to participate in any proceedings with respect to a Taking. In such event Lessor shall cooperate with Lessee to facilitate such participation. Lessee shall not enter voluntarily into any binding agreement or settlement related to a Taking without the prior consent of Lessor.

(d) The proceeds of any Taking shall be apportioned as between Lessor and Lessee as follows: Lessor shall receive an amount equal to the fair market value of the Land subject to the Taking and calculated with reference to the value of the Land for

its use as of the Effective Date, but not the improvements constructed or placed by Lessee thereon, and Lessee shall receive such amounts as are necessary to compensate Lessee for the loss of use of the Leased Premises affected by the Taking, including any improvements constructed or placed by Lessee on the Land, and the loss or interruption of Lessee's business and the cost of any restoration or repair necessitated by such Taking, including consequential losses.

15. **Default; Remedies.** The failure by a party hereto to perform its obligations under this Agreement, if not remedied within thirty (30) calendar days of written notice of such failure from the other party, or if such failure is not capable of being remedied within thirty (30) days, remedial action is not commenced within such thirty (30) day period and thereafter diligently pursued, shall constitute a default hereunder (a "**Default**"). Following an event of Default, the non-defaulting party may pursue any available remedies at law or in equity, subject to Section 25(b). Notwithstanding the foregoing, the non-defaulting party shall take commercially reasonable measures to mitigate damages resulting from such Default. Lessee may, in its sole and absolute discretion, elect to cure a Default on the part of Lessor, in which case Lessor shall reimburse Lessee for the reasonable and documented out-of-pocket expenses incurred by Lessee in pursuing to cure such Default, and if Lessor fails to reimburse such expenses within thirty (30) days after receipt of an invoice therefor Lessee shall be entitled to offset any unreimbursed expenses against future payments of Rent or other amounts due to Lessor hereunder.

16. **Indemnifications.** Except to any extent expressly provided for in this Agreement, and to the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of this Agreement. Lessee's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City.

Lessee acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising out of or in any way connected with releases or discharges of a hazardous substance, or the exacerbation of a potential environmental hazard, occurring as a result of or in connection with Lessee's activities or the activities of any of Lessee's representatives (including, without limitation, any of Lessee's officers, officials, employees, agents, volunteers, invitees, sublessees, consultants, subconsultants, contractors or subcontractors), and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration,

remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any legal requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

If Lessee should contract any work on the Leased Premises or subcontract any of its obligations under this Agreement, Lessee shall require each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of this Section and meet all the insurance requirements in this Agreement or as determined by the City of Fresno Risk Manager or their designee.

The provisions of this Section shall survive the termination or expiration of this agreement.

17. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notice served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

18. **Easements.** Lessor hereby grants to Lessee during the Term (a) an easement for light, solar energy resources, access (including vehicular and pedestrian ingress and egress) and utility access over, under and across the Land, (b) an easement for any and all encroachments of Lessee's Property onto the Land, and (c) an easement over, under and across the Land for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the Intended Use of the Leased Premises.

Without limiting the foregoing, Lessor agrees to execute and deliver any separate easement agreements for the benefit of Lessee, the Leased Premises or the utility to which the System is interconnected (the "**Utility**") as Lessee or the Utility may reasonably request to facilitate the construction, operation and removal of the System, or otherwise in connection with Lessee's or the Utility's use of the Leased Premises during the Term (collectively, the "**Easements**"). Lessor and Lessee (and the Utility, as applicable) shall in good faith establish the location and terms of such Easements within twenty (20) days of the request therefor, and any such Easements shall be confirmed in writing, signed by the parties and recorded in the County records against the Land and shall run with the Lease and the Land and inure to the benefit of Lessee (or the Utility, as applicable) and its transferees, successors and assigns hereunder, including any Additional Notice Party.

Lessor hereby grants and conveys to Lessee an exclusive easement on, over and across the Land for direct sunlight to any solar panels on the Leased Premises and an exclusive easement prohibiting any obstruction of direct sunlight (collectively, the "**Solar**

Easement") throughout the entire Land to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Land, together vertically through all space located above the surface of the Land, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Land through each Site to each point and on and along such line to the opposite exterior boundary of the Land.

19. **Non-Disturbance Agreement.** Upon Lessee's request, Lessor shall execute, and shall take efforts to cause any current beneficiaries of any mortgages/deeds of trust, or any other parties with rights in, or interests secured by Lessor's interest in, the Land or any other property owned by Lessor which is subject to an easement benefiting Lessee (collectively, "Lessor's Land"), to enter into an agreement with Lessee confirming that such party subordinates its rights or interests in Lessor's Land to this Agreement, or solely with respect to current beneficiaries of any mortgages/deeds of trust or other parties with a security interest in Lessor's Land, that such party will not disturb or extinguish Lessee's interest in Lessor's Land and in this Agreement. Such agreement shall be in form and substance reasonably agreeable to Lessee and any Additional Notice Party (defined in Section 25). If Lessee and Lessor are unable to obtain such agreements from any third party holding an interest in Lessor's Land, Lessee shall be entitled (but not obligated) to make payments or performance in fulfillment of Lessor's obligations to such third party and may offset the amount of such payments or performance from amounts due Lessor under this Agreement; provided, that if such obligations cannot be satisfied by the payment of money or performance by Lessee, Lessee shall have the right to immediately terminate this Agreement.

20. **Lessor's Representations and Warranties.**

(a) Lessor hereby represents and warrants to Lessee that: (i) Lessor owns the Land in fee simple, and has all requisite right, power and authority to enter into this Agreement and the Lease, without the consent or joinder of any party not joining in the execution hereof (including spouses); (ii) the execution of this Agreement and the granting of the Lease to Lessee will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Lessor is a party or by which the Land or any part thereof is bound; (iii) no hazardous or toxic substances have been released or manufactured, or are present on the Land in amounts in excess of the lawful limit absent a permit, and no underground storage tanks (whether or not abandoned) exist on or under the Land; (iv) Lessor has not received any notice of any pending or threatened Taking, zoning change or legal, regulatory or other noncompliance relating to the Land, or of any possible widening of the streets abutting the Land; (v) Lessor has not received any notice of proposed curtailment of utility services to the Land; (vi) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants, and there are no existing liens,

mortgages, or deeds of trust encumbering all or any part of the Land; (vii) there are no service or maintenance contracts affecting the Land; (viii) there are no delinquent or outstanding Taxes, liens or other impositions levied or assessed against the Land; (ix) except for the Lease granted in this Agreement, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded; (x) Lessor is not in the hands of a receiver nor is an application for such a receiver pending, nor has Lessor made an assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy nor is Lessor a defendant in any ongoing or pending litigation proceedings; (xi) if Lessor is a limited partnership, trust, limited liability company, corporation or other business entity, Lessor is in good standing under the laws of the state of its incorporation and the state in which the Land is located, and the undersigned representatives of Lessor have full power and authority to execute and deliver this Agreement; (xii) there is no underground septic system or leach field located upon the Land; (xiii) no person or entity has buried any refuse, construction materials, garbage or any other matter of any kind or nature below the surface of the Land, (xiv) the Land does not support or affect any endangered species and is not within an area that is subject to any "environmentally sensitive" or "non-disturbance" designation under any law or zoning ordinance, and (xv) no portion of the Land includes any archeological site, burial site, artifact or other condition of archeological, tribal or historical significance.

(b) The provisions of this Section 20 will survive the termination or expiration of this Agreement. All of Lessor's representations and warranties contained in this Agreement shall be true as of the Effective Date.

21. Insurance.

(a) Throughout the life of this Agreement, Lessee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by Lessor's Risk Manager or his/her designee at any time and in his/her sole discretion. The Lessor, its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "Lessor") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Lessor, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Lessee shall be withheld until notice is received by Lessor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Lessor. Any failure to maintain the required insurance shall be sufficient cause for Lessor to terminate

this Agreement. No action taken by Lessor pursuant to this section shall in any way relieve Lessee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Lessor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Lessor shall apply to all claims and 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 Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the Lessor, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Lessee, or any party the Lessee subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to Lessor and each of their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY :**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY :**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **PROPERTY:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Lessee's business property.

UMBRELLA OR EXCESS INSURANCE

In the event Lessee purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the Lessor and each of their officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Lessee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Lessee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the

Certificate of Insurance, and approved by, the Lessor's Risk Manager or his/her designee. At the option of the Lessor's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Lessor, its officers, officials, employees, agents and volunteers; or
- (ii) LESSEE shall provide a financial guarantee, satisfactory to Lessor's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Lessor be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to Lessor, except ten (10) days for nonpayment of premium. Lessee is also responsible for providing written notice to the Lessor under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish Lessor with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for Lessor, Lessee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General and Automobile Liability policies of insurance shall be endorsed to name Lessor, its officers, officials, employees, agents and volunteers as additional insureds.

Lessee shall establish additional insured status for the Lessor and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

The Commercial General and Automobile Liability policies of insurance shall be endorsed so Lessee's insurance shall be primary and no contribution shall be required of Lessor. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its officers, officials, employees, agents and volunteers. If Lessee maintains higher limits of liability than the minimums shown above, Lessor requires and shall be entitled to coverage for the higher limits of liability maintained by Lessee.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to Lessor, its officers, officials, employees, agents and volunteers.

The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. Full replacement value of any permanent improvements on the Leased Premises, with the Lessor named as a Loss Payee.
2. The coverage shall contain:
 - (i) No coinsurance penalty.
 - (ii) No limitations or exclusions for vacancy of any part of the Leased Premises.
 - (iii) No special limitations on the scope of protection afforded to LESSOR.

PROVIDING OF DOCUMENTS - Lessee shall furnish Lessor with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received and approved by the LESSOR'S Risk Manager or his/her designee prior to LESSOR'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of Lessor, Lessee shall immediately furnish Lessor with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

SUBCONTRACTORS - If Lessee subcontracts any or all of the services to be performed under this Agreement, Lessee shall require, at the discretion of the Lessor Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the Lessor to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by Lessor Risk Manager or designee. If no Side Agreement is required, Lessee will be solely responsible for ensuring that its subcontractors maintain

insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

22. **Lessor Covenants.** From and after the Effective Date until the expiration or **earlier** termination of this Agreement:

(a) Lessor shall not, without the prior written consent of Lessee, (i) institute or consent to any rezoning of the Land; (ii) further encumber or suffer to exist the further encumbrance or Transfer of the Land (except as caused by or on behalf of Lessee) except in accordance with Section 24 of this Agreement; (iii) grant any option, leasehold, easement or any right of any kind, or cause or permit any activities or conditions, that would interfere with Lessee's rights hereunder or impair operation of the System (including, without limitation, by erecting or permitting to be erected any cell towers, water towers, billboards, silos, trees or any other natural or man-made structures to be placed, constructed, or to otherwise exist on any property owned or controlled by Lessor that may diminish the quantity of sunlight that otherwise would reach the Leased Premises or that may cause shade or shadows upon the Leased Premises or any portion thereof, and Lessor shall not emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Leased Premises, or burn or permit the burning of garbage, plant, shrub, and yard trimmings or other vegetation that could adversely affect insolation levels on the Leased Premises), and, upon written notice from Lessee, Lessor shall promptly remove any existing uses or improvements on any property adjacent to or in the vicinity of the Leased Premises which Lessee reasonably determines will impair Lessee's use of the Leased Premises; (iv) cause or permit the violation of any laws, rules, regulations or ordinances applicable to the Land; or (v) commence (or have commenced against it) any voluntary or involuntarily proceedings in bankruptcy, insolvency or similar proceedings with respect to Lessor.

(b) Lessor shall promptly give Lessee a copy of any notice of any kind received by Lessor regarding the Land or any Taxes.

(c) Lessor shall comply with and perform all of its covenants, agreements and obligations to third parties, including, but not limited to, payment of government property taxes and assessments (to the extent required under this Agreement), and payment and performance of any mortgage or other financing obligations owed to lenders, which affect or relate to the Land.

23. **Lessor's Right to Enter and to Emergency Discharge of Effluent.** Lessor's representatives shall have the right to enter upon all or any part of the Leased Premises at any and all reasonable hours on any day of the week for any lawful purpose(s) including: (i) the purpose of determining whether or not Lessee is complying with the provisions hereof and fulfilling its obligations hereunder; (ii) the purpose of inspecting same; (iii) the purpose of making any required repairs of an emergency nature to which Lessee cannot adequately respond; and (iv) to perform soil sampling and testing. Lessee understands that Lessee may be billed by Lessor for the full cost of performing

such repairs. Lessee acknowledges and agrees that in the event of an emergency Lessor shall have the absolute right to discharge treated effluent onto the Leased Premises, at any time and in any amount, provided that Lessor shall abate and refund rental fees on the affected acreage for the period such acreage is rendered unusable for Lessee's purposes hereunder. Lessor shall have no other or further liability, responsibility or obligation to Lessee as of result of such emergency discharge of Effluent. In this regard Lessee understands and voluntarily agrees to assume the risk inherent in operating the System in an area subject to discharge of Effluent.

24. **Assignments; Transfers.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, subject to the following terms and conditions:

(a) Lessee may assign this Agreement, in whole or in part, or, during the Term, with Lessor's prior consent, not to be unreasonably withheld, conditioned or delayed. Lessee must provide Lessor with 30 days written notice of any intended assignment and must provide Lessor a copy of any assignment agreement. If Lessee assigns its entire interest in this Agreement to a party that expressly assumes in writing all obligations of Lessee under this Agreement arising after the effective date of the assignment, Lessee shall be released or discharged from all of its covenants and obligations under this Agreement, except such obligations as shall have accrued prior to the effective date of any such assignment or transfer, and Lessor agrees to look solely to Lessee's assignee for performance of such obligations. The transfer of all or a portion of Lessee's membership interests to a third party shall not be considered an assignment for the purposes of this Section 24(a); provided, however, that Lessor's prior written consent, not to be unreasonably withheld, conditioned or delayed, shall be required for the transfer of more than fifty percent (50%) of Lessee's membership interests to a third party that owns fewer than five (5) separate solar facilities with a nameplate capacity of greater than one (1) MWdc each.

25. **Third Party Protections.** Lessee may pledge, sell, grant and/or assign, mortgage and otherwise transfer (each, a "**Transfer**") this Agreement or Lessee's leasehold interest in the Leased Premises, in whole or in part, without Lessor's prior consent, in connection with the financing or re-financing of Lessee's Property. Lessee shall provide Lessor with written notice of the existence of, and contact information for, any third party (including, without limitation, any tax-credit equity providers) providing debt, equity or other financing (including, but not limited to, tax equity or sale-leaseback or similar financing) to or for the benefit of Lessee, directly or indirectly, whether secured or unsecured (and if secured, whether via a collateral Transfer, mortgage, deed of trust, or otherwise) (any such third party, an "**Additional Notice Party**"). Upon such notice, the following provisions shall apply until such time as Lessor shall receive written confirmation that such Additional Notice Party's interests in this Agreement, the System or the Leased Premises are released:

(a) Without limiting Section 24, no assignment, amendment, election to terminate or other modification of this Agreement shall be effective unless approved by the Additional Notice Party in writing. In the event Lessee acquires fee ownership of the Land, or in the event of Lessee's voluntary surrender of the leasehold estate, there shall be no merger of the leasehold estate created by this Agreement with the fee without the prior written consent of the Additional Notice Party, which consent may be granted, conditioned or withheld in the Additional Notice Party's sole and absolute discretion.

(b) If any event of Default by Lessee remains uncured following the applicable cure period under Section 15, Lessor shall send written notice of such uncured Default to each Additional Notice Party at the address provided therefor, whereupon the Additional Notice Party shall have an additional thirty (30) days during which it may, in its sole and absolute discretion, cure such Default on Lessee's behalf. Lessor may not pursue any remedy for such Default unless it remains uncured following the expiration of such Additional Notice Party's thirty (30) day cure period. Notwithstanding the foregoing, the aforesaid thirty (30) day cure period shall be extended for the time reasonably required to complete any such cure (not to exceed 180 days), including the time required for any Additional Notice Party to perfect its right to cure any non-monetary default by obtaining possession of the Leased Premises (including possession by a receiver), provided such Additional Notice Party acts with reasonable and continuous diligence.

(c) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Agreement as long as the Rent and all other obligations of Lessee hereunder are paid or performed by or on behalf of Lessee or the Additional Notice Party in accordance with the terms of this Agreement.

(d) If this Agreement is terminated pursuant to a Lessee Default, including, but not limited to, any Default not cured by an Additional Notice Party within the cure period allowed therefor, or if this Agreement is terminated pursuant to a rejection or disaffirmance in bankruptcy or other similar proceeding with respect to Lessor or Lessee, then Lessor, or its successor in interest to the Land, if any, shall enter into a new lease with the Additional Notice Party or its nominee (a "**Successor Lessee**") on the same terms as set forth herein, and for a term equal to the then-unelapsed portion of the Term of this Agreement, with an option to extend for any then-remaining Renewal Term(s). From the effective date of the termination, rejection or disaffirmance of this Agreement, to the date of execution and delivery of the new lease, Successor Lessee may use and enjoy the Leased Premises and any easements granted hereunder without hindrance by Lessor or any party claiming by, through, or under Lessor. Such new lease shall be effective as of the date of termination, rejection or disaffirmance of this Agreement and shall have the same priority as this Agreement. If more than one Additional Notice Party makes a request for a new lease pursuant hereto, then unless all such Additional Notice Parties direct otherwise, the new lease shall be delivered to the Additional Notice Party with a security interest in this Agreement which is prior in lien (or, if no such Additional Notice Party has a security interest in this Agreement, the new lease shall be delivered to the Additional Notice Party whose contact information was sent to Lessor (in

accordance with the introduction to this Section 25) earliest in time. This Section will survive any termination, rejection or disaffirmance of this Agreement, as described above.

(e) An Additional Notice Party shall have the right, subject to the terms and conditions of this Agreement: (1) to assign its security interest; (2) to enforce its lien and acquire title to the leasehold estate by any lawful means; (3) to take possession of and operate the Lessee's Property, the leasehold estate or any portion thereof and to perform all obligations to be performed by Lessee hereunder, or to cause a receiver to be appointed to do so; and (4) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor's consent shall be required for the acquisition of the encumbered leasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure. During any period of possession of the Leased Premises by an Additional Notice Party (or a receiver requested by such Additional Notice Party) and/or during the pendency of any foreclosure proceedings instituted by an Additional Notice Party, the Additional Notice Party shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's leasehold estate by the Additional Notice Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale and subject to the provisions of this Section 25(e), this Agreement and the Lease created hereby shall continue in full force and effect and the Additional Notice Party or party acquiring title to Lessee's leasehold estate shall, within thirty (30) days, commence the cure of all defaults hereunder, to the extent reasonably susceptible to cure, and thereafter diligently process such cure to completion.

(f) Without limiting the terms of Section 9 above, Lessor recognizes and acknowledges that any claim or claims that an Additional Notice Party has or may have against Lessee's Property are superior to any lien, security interest, or claim of any nature that Lessor now has or may hereafter have in and to Lessee's Property by statute, rule, regulation, common law, agreement or otherwise. Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent an Additional Notice Party from the Leased Premises for the purpose of inspecting the System, Lessee's Property and the Leased Premises.

(g) Lessor agrees to execute and deliver such documents and instruments, including, without limitation, an amendment to this Agreement, an amendment to any recorded memorandum of this Agreement or a subordination agreement, as may be reasonably requested by an Additional Notice Party or in furtherance of a Transfer related to the financing or re-financing of the System, to allow such Additional Notice Party reasonable means to protect or preserve the System or its collateral interest in this Agreement and the Lease created hereby; provided, that Lessor shall not be required to amend this Agreement in any way that would alter the Term, decrease the Rent or otherwise in any material respect adversely affect the economic

benefits to which Lessor is entitled under this Agreement. Each party shall bear its own expenses, including legal expenses, in connection with any request for the execution and delivery of additional documents and instruments in accordance with this Section 25(g).

26. Taxes.

(a) During the Term, Lessee shall pay Lessee's Portion (calculated in accordance with this Section 26(a)) of the Tax Bill, applicable to each tax year or part thereof which falls within the Term. Lessor shall provide Lessee with copies of all invoices, bills and notices (collectively, "Tax Bills") regarding all real estate and ad valorem taxes and assessments imposed or levied on the Premises by any applicable government taxing authority (each, a "Tax", and collectively, "Taxes"), within thirty (30) days of Lessor's receipt of any such Tax Bill. Lessor shall remit payment directly to the taxing authority for the entire amount of any Tax Bill and, within thirty (30) days after Lessor notifies Lessee that such payment has been made, Lessee shall reimburse Lessor for the portion of the Tax Bill allocable to the Premises (such portion, "Lessee's Portion"), which portion shall bear the same relationship to the total Tax Bill as the Premises bears to the larger tax parcel. Once the Leased Premises is established, upon request of Lessee, the parties shall confirm Lessee's Portion in a written confirmation. Without limiting the foregoing, Lessee shall have the right, but not the obligation, at any time during the Term to pay the entire Tax Bill on Lessor's behalf and deduct any amounts not attributable to Lessee's Portion from future payments of Rent.

(b) Without limiting Section 26(a), if, during the Term, Lessee's use of the Premises results in the revocation of a classification of the Premises as "agricultural land", "forestry land" or similar classification, thereby triggering liability for "rollback" taxes, Lessee shall pay Lessee's Portion of such rollback tax liability, together with any related interest or penalties, other than interest and/or penalties arising from Lessor's failure to timely provide Lessee with a copy of such Tax Bill.

(c) Upon Lessee's reasonable request, Lessor shall take such reasonable actions and do such things as are necessary or desirable to facilitate any action by Lessee to contest any Tax Bill or the assessed value of the property on which they are levied, or to otherwise seek the abatement of Taxes applicable to the Premises, or to seek the separate assessment of the Premises as a distinct tax parcel if the Premises are included within a larger tax parcel. Lessee shall have the right, but not the obligation to pursue any such action.

(d) Notwithstanding anything contained in this Agreement, (1) Lessee shall not be under any obligation to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Lessor or which may be imposed against Lessor or against the Rent payable pursuant to the Lease or upon the income or profits of Lessor by reason of any law now in force or later enacted, and (2) in the event the Premises are re-assessed for tax purposes because of transfer of ownership of the Land (or any portion thereof) during the Term, Lessee shall not be

responsible for payment of any increase in taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of Lessor. However, any documentary transfer tax assessed upon the creation of a leasehold interest in the Leased Premises under this Agreement shall be paid by Lessee.

(e) Lessee recognizes and understands that this lease may create a possessory interest subject to property taxation and that the lessee may be subject to the payment of property taxes levied on such interest. Lessor is not responsible for payment of any personal property taxes assessed on the Leased Premises, including any property taxes levied based on a determination that there is a taxable possessory interest as a result of this Agreement.

27. **Estoppel.** Upon the request of either party (or any Additional Notice Party), the non-requesting party shall deliver to the requesting party a certificate setting forth the material terms of this Agreement, the existence of any Default under this Agreement, the date through which Rent has been paid and any amounts on deposit with Lessor, the current Rent rate, and such other reasonable terms requested by the requesting party. The failure by the non-requesting party to respond to such request within thirty (30) days shall constitute an event of Default, and in addition, shall result in the deemed acceptance, approval and confirmation of the truth of the matters set forth in the certificate sent with the original request.

28. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the State of California, excluding however, any conflicts of laws rule which would apply the law of another jurisdiction. Venue for purposes of filing any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

29. **Interpretation; Amendment.** The terms of this Agreement shall not be amended, restated, changed or otherwise modified except in a writing signed by Lessor, Lessee and any Additional Notice Party. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

30. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be modified only by written instrument duly authorized and executed by both parties.

31. **Exclusive Control; Quiet Enjoyment.** Throughout the Term, Lessee shall have exclusive control, possession, occupancy, use and management of the Leased Premises, and Lessor shall warrant and defend Lessee's right to quietly hold and enjoy the Leased Premises. Lessee, and its agents, guests, sublessees and designees, and any Additional Notice Party, shall have access to the Leased Premises at all times during

the Term, and neither Lessor nor any agent of Lessor shall, without a Lessee representative, enter upon any portion of the Leased Premises except as specifically permitted hereunder. For the avoidance of doubt, this Agreement does not convey any subsurface oil, gas, mineral, liquid or other subsurface rights (collectively, "**Mineral Rights**") to Lessee; provided, however, that Lessor shall not engage in, and shall not permit, any activity, including, without limitation, the extraction of minerals, oil, gas, liquid or other substances, if such activity could result, in Lessee's sole and absolute discretion, in a failure of subsurface support for the Leased Premises or otherwise impair or adversely affect Lessee's Property or Lessee's use of the Leased Premises. The foregoing sentence shall be a covenant running with the Land binding upon any party owning any interest in, or having rights to develop or use the Mineral Rights of Lessor.

32. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provisions herein.

33. **Confidentiality.** Lessor and Lessee agree to hold each other's confidential information in strict confidence. Confidential information includes business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System. Each party may disclose confidential information to its officers, directors, employees, agents, contractors, or as required by applicable law, rule, or regulation.

34. **Attorneys' Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

35. **Intentionally Deleted.**

36. **Marketing.** During the Term, Lessor gives and grants to Lessee and Lessee's affiliates, and each of their respective licensees, agents, representatives, employees, successors and assigns (collectively, the "**Licensed Parties**"), the right and license to photograph, publish and use photographs (whether still or moving) of the Leased Premises in all media and types of advertising and promotion by the Licensed Parties. Lessor agrees that all images of the Leased Premises used and taken by the Licensed Parties are owned by the Licensed Parties and that the Licensed Parties may obtain copyright in material containing same. If Lessor should receive any print, negative or other copy thereof, Lessor shall not authorize its use by anyone else. Lessor represents and warrants that the license granted hereunder (a) does not and will not violate or infringe upon the rights of any third party and entity, and (b) does not in any way conflict with any existing commitment on Lessor's part. Nothing herein shall constitute

any obligation on the Licensed Parties to make use of any of the rights set forth in this Section 36.

37. **State Specific Provisions.** In the event of any inconsistencies between the terms and conditions of this Section 37 and the other terms and conditions of this Agreement, the terms and conditions of this Section 37 shall control and be binding:

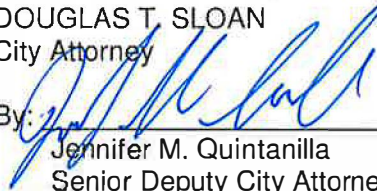
(a) As used in this Agreement, "**UCC**" shall mean Uniform Commercial Code as in effect in the State of California or any replacement or successor statute or code.

[Signatures follow on the next page.]

Lessor,
CITY OF FRESNO,
A California municipal corporation

By: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  11/23/21
Jennifer M. Quintanilla Date
Senior Deputy City Attorney

ATTEST:
TODD STERMER, CMC, MMC
City Clerk

By: _____
Deputy Date

Lessor:
Director of Public Utilities
City of Fresno, Department of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721

Lessee,
Fresno Community Solar Developers, LLC.
A California limited liability company

By: 

Name: Laurene Hosterlund

Title: President
(If corp or LLC., Board Chair, President, or
Vice President)

By: 

Name: Richard F. Spencer

Title: CFO
(If corp or LLC., CFO, Treasurer, Secretary
or Assistant Secretary)

Lessee:

Attn: Evan Riley
1808 Wedemeyer St, Suite 219
San Francisco, CA 94129

With a copy to:
Fresno Community Solar Developers
499 West Shaw Avenue, Suite 116
Fresno, CA 93704

Attachments:
Exhibit A – Legal Description of Leased Premises
Exhibit B – Site Plan

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of FRESNO)

On 4/17/2021 before me, M. SLATER, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared LAWRENCE WESTERLUND
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

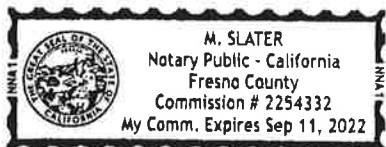
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of FRESNO)
 On 11/17/2021 before me, M. SLATER, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared RICHARD F. SPENCE
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

EXHIBIT A

Page 1 of 2

LEGAL DESCRIPTION OF THE LEASED PREMISES

All that portion of the Southeast Quarter of Section 22, Township 14 South, Range 19 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, more particularly described as follows:

BEGINNING at the intersection of a line parallel with and 119.00 feet southerly of the north line of said Southeast Quarter with a line parallel with and 180.00 feet easterly of the west line of said Southeast Quarter; thence from said **POINT OF BEGINNING**, along first said parallel line, South 89°42'45" East, a distance of 2290.54 feet to a line parallel with and 170.00 westerly of the east line of said Southeast Quarter;

Thence along last said parallel line, South 00°23'59" West, a distance of 35.00 feet to a line parallel with and 154.00 feet southerly of the north line of said Southeast Quarter;

Thence along last said parallel line, South 89°42'45" East, a distance of 84.00 feet to a line parallel with and 86.00 feet westerly of the east line of said Southeast Quarter;

Thence along last said parallel line, South 00°23'59" West, a distance of 878.09 feet to a line parallel with and 1608.00 feet northerly of the south line of said Southeast Quarter;

Thence along last said parallel line, North 89°44'37" West, a distance of 1304.00 feet to a line parallel with and 1390.00 feet westerly of the east line of said Southeast Quarter;

Thence along last said parallel line, South 00°23'59" West, a distance of 1004.00 feet to a line parallel with and 604.00 feet northerly of the south line of said Southeast Quarter;

Thence along last said parallel line, North 89°44'37" West, a distance of 1070.42 feet to a line parallel with and 180.00 feet easterly of the west line of said Southeast Quarter;

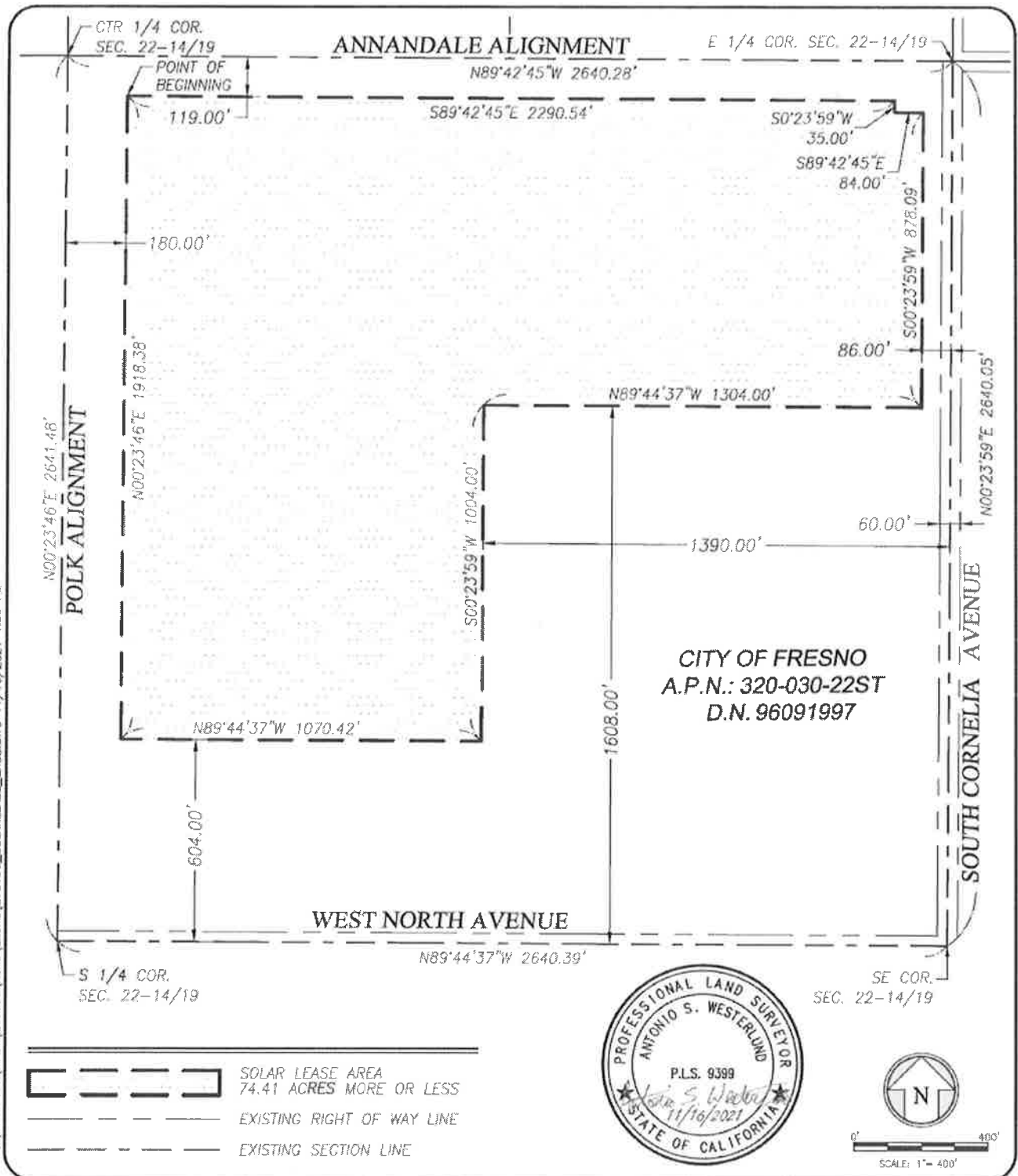
Thence along last said parallel line, North 00°23'46" East, a distance of 1918.38 feet to the **POINT OF BEGINNING**.

Containing 74.41 acres, more or less.

See Exhibit B, attached hereto and made a part hereof.



L:\PROJECTS\2021\210196\ACAD\LEGAL\210196_SOLARLEASE_EXH0.DWG 11/16/2021 1:39 PM



PROJECT NO.: 210196
DRAWN BY: TRF
QA/QC BY: ASW
SCALE: 1"=400'
SHEET NO.:
1 OF 1

EXHIBIT A
Page 2 of 2
SOLAR LEASE AREA
PLAT TO ACCOMPANY DESCRIPTION

QK

601 POLLASKY AVE., STE. 301 TEL: (559) 449-2400
CLOVIS, CA 93612 WWW.QKINC.COM
© COPYRIGHT BY QK INCORPORATED, INC. UNAUTHORIZED USE PROHIBITED

