

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA #: B-7

AGENDA DATE: May 16, 2017

SUBJECT:

Approval of the Amended and Restated Solar Generating Facility Land Option and Lease Agreement with Golden Hills Solar, LLC for a Long-Term Solar Lease on County Owned Land Adjacent to the Fink Road Landfill

BOARD ACTION AS FOLLOWS:

No. 2017-256

On motion of Supervisor DeMartini, Seconded by Supervisor Olsen
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: Elizabeth A. King
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Chief Executive Office

Urgent

Routine

BOARD AGENDA #: B-7

AGENDA DATE: May 16, 2017

CEO CONCURRENCE:



4/5 Vote Required: Yes No

SUBJECT:

Approval of the Amended and Restated Solar Generating Facility Land Option and Lease Agreement with Golden Hills Solar, LLC for a Long-Term Solar Lease on County Owned Land Adjacent to the Fink Road Landfill

STAFF RECOMMENDATIONS:

1. Approve the Amended and Restated Solar Generating Land Option and Lease Agreement with Golden Hills Solar, LLC to develop a solar generating facility on county-owned land adjacent to the Fink Road Landfill.
2. Authorize the Chief Executive Officer to sign the Amended and Restated Solar Generating Land Option and Lease Agreement and to execute and deliver any and all documents that he deems necessary for the purposes of the project.

DISCUSSION:

On September 29, 2009, the Board of Supervisors authorized staff to issue a Request for Qualifications (RFQ) to select the most qualified candidate interested in entering into a long-term ground lease for 1,678 acres of county-owned property adjacent to the Fink Road Landfill. On December 8, 2009, the County entered into a 12-month Exclusive Right to Negotiate Agreement with JKB Development, Inc. (JKB Development), formally JKB Energy, for a long-term farming and potential solar farm lease for this location. On December 20, 2010, the Board approved a one-year extension to the 12-month Exclusive Right to negotiate Agreement with JKB Development. A second one-year extension was approved on December 20, 2011, for a total of three years of exclusive right to negotiate.

On February 5, 2013 the Board approved the key terms and conditions for a Land Option and Lease Agreement with Golden Hills Solar, LLC for a long-term Solar and Farming Lease on county-owned land adjacent to the Fink Road Landfill and authorized staff to finalize and sign the agreement. Golden Hills Solar is a limited liability company formed by JKB Development. The agreement was finalized and signed on May 20, 2013. Terms of that agreement included:

- A lease for 1,678 acres;
- 70MW solar energy project;
- Option term of 48 months total \$300,000 paid in quarterly advance installments of \$18,750;
- Lease term is one 25 year term, plus 2 additional optional terms on one-year each;
- Upon exercise of Option, the Solar Lease rent is \$400,000 annually, with a 1.5% escalator every year;

Approval of the Amended and Restated Solar Generating Facility Land Option and Lease Agreement with Golden Hills Solar, LLC for a Long-Term Solar Lease on County Owned Land Adjacent to the Fink Road Landfill

- Upon exercise of Option, the long-term farm lease rent is \$100,000 annually, with a 1.5% escalator every year;
- A contribution of \$1,250,000 to be paid in annual equal installments of \$62,500, commencing in year 6.
- The total estimated revenue is \$18.5 million for a term of 27 years.

The County has been negotiating an Amendment to the Land Option and Lease Agreement with Golden Hills Solar, over the past few months. The terms agreed upon include:

- A lease for 1,691 acres (per legal parcels);
- 225MW solar energy project;
- Option term of 60 months total \$500,000 paid in quarterly advance installments of \$25,000;
- Lease term is one 25 year term, plus 2 additional optional terms on five-years each;
- Upon exercise of Option, the Solar Lease rent is \$660 per acre annually, 1,000 up to 1,100 acres, with a 0.5% escalator every year; with a Solar Benefit of an additional \$80 per acre annually;
- Upon exercise of Option, the long-term farm lease rent is \$100 per acre annually, with a 0.5% escalator every year.

The property is immediately adjacent to and north/northwest of the Fink Road Landfill and is set aside for future landfill expansion and/or environmental mitigation area. Currently the acreage is designated as “tentatively reserved” in the County’s Siting Element; the planning document that identifies existing and planned disposal capacity for the residents of Stanislaus County. The agreement includes language that the Lessee will cooperate with the County to maintain and prepare the property for potential use as mitigation lands for potential effects of any future expansion of the Fink Road Landfill. At the end of the agreement the Lessee is responsible to restore the site back to its original use. A bond is secured for this purpose.

POLICY ISSUE:

Board of Supervisors’ approval is needed to lease county-owned property.

FISCAL IMPACT:

The total estimated revenue for the Solar Land Option, Solar Lease and Benefit Agreement, and the long-term Farming Lease over the complete term of the agreement is \$30,764,672. This estimate is based on the minimum of 1,000 acres for the solar lease site. The revenue will support future expansion needs for the Fink Road Landfill.

Approval of the Amended and Restated Solar Generating Facility Land Option and Lease Agreement with Golden Hills Solar, LLC for a Long-Term Solar Lease on County Owned Land Adjacent to the Fink Road Landfill

| | | |
|--|---------------|----------------------|
| Cost of recommended action: | | \$ 30,764,672 |
| Source(s) of Funding: | | |
| Solar Land Option | \$ 500,000.00 | |
| Solar Lease | 25,175,949 | |
| Solar Benefit | 2,800,000 | |
| Farming Lease | 2,288,723 | |
| Funding Total: | | \$ 30,764,672 |
| Net Cost to County General Fund | | \$ - |

| | |
|---|-------------|
| Fiscal Years: | 2017 - 2057 |
| Budget Adjustment/Appropriations needed: | No |

BOARD OF SUPERVISORS' PRIORITY:

The recommended action is consistent with the Board's priorities of a Well Planned Infrastructure System and Efficient Delivery of Public Services by evaluating the best use of this county landfill buffer property on a long-term basis.

STAFFING IMPACT:

The Chief Executive Office, Department of Environmental Resources, Department of Planning and Community Development, and County Counsel staff has negotiated with Golden Hills Solar to finalize an amended Land Option and Lease Agreement.

CONTACT PERSON:

Keith Boggs, Assistant Executive Officer Telephone: (209) 652-1514
 Jami Aggers, Director of Environmental Resources Telephone: (209) 525-6770

ATTACHMENT(S):

1. Amended and Restated Solar Generating Land Option and Lease Agreement with Golden Hills Solar, LLC

**AMENDED AND RESTATED SOLAR GENERATING FACILITY
LAND OPTION AND LEASE AGREEMENT**

This Amended and Restated Solar Generating Facility Land Option and Lease Agreement (the "**Agreement**") is made and entered into as of May 9, 2017 (the "**Effective Date**"), by and between Golden Hills Solar, LLC., a California limited liability company, its successors and assigns ("**Lessee**") and the County of Stanislaus ("**Landlord**" or "**Stanislaus County**"). Lessee and Landlord are at times collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**."

RECITALS

A. Landlord is the owner of certain real property located in Stanislaus County, State of California, consisting of five (5) legal parcels with a gross acreage of approximately 1,691 acres, with Assessor's Parcel Numbers 025-012-016, 025-012-017, 025-012-031, 025-012-033 and 027-033-012 (por.) as shown in the Stanislaus County Assessor Map attached hereto as **Exhibit A** (each, a "**Parcel**" and collectively, the "**Property**").

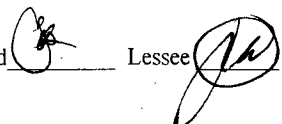
B. Lessee desires to develop up to approximately 300MW of alternating current solar energy generating and energy storage facility / facilities (collectively "**Generating Facility**") in Stanislaus County, California, which requires the use of up to approximately 1100 acres, and Lessee believes that one or more Parcels of the Property would be suitable for Lessee's development plans.

C. Landlord desires to lease up to approximately 1100 acres of the Property to Lessee for the purpose of developing and operating the Generating Facility, and Landlord anticipates the remaining portion of the Property to be used as environmental mitigation lands for the Fink Road Landfill.

D. Lessee desires to conduct additional due diligence and entitlement activities in conjunction with the Generating Facility and to determine, in its sole discretion, which of the Parcels, or portions thereof, may be suitable or required for the successful development and operation of the Generating Facility or as mitigation land therefor. Upon Lessee's determination of the Parcels, or portions thereof, suitable for further development of the Generating Facility, Lessee desires to designate in writing to Landlord at any time during the Option Period (as defined below) those Parcels, or portions thereof, that Lessee will utilize for the further development of the Generating Facility or mitigation land therefor (collectively, the "**Site**").

E. Lessee desires to obtain from Landlord an exclusive option on the Property to designate and lease the Site for the development, building, owning, operating and maintaining of the Generating Facility, including, without limitation, solar panels, heliostats, energy storage equipment, mounting substrates or supports, wiring and connections, power inverters, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related equipment.

F. On February 5, 2013, (Board Agenda Item B-2) the Stanislaus County Board of Supervisors approved the key terms and conditions of the Original Agreement (defined below), including granting Lessee an exclusive option on the Property to designate and lease the Site for



purpose of developing, building, owning, operating and maintaining a generating facility thereon, and authorized the Chief Executive Officer to finalize, execute and deliver this Agreement to Lessee.

G. On May 20, 2013, the Parties entered into the Solar Generating Facility Land Option and Lease Agreement (“**Original Agreement**”).

H. On May 9, 2017, the Stanislaus County Board of Supervisors approved the key terms and conditions of this Amended and Restated Solar Generating Facility Land Option and Lease Agreement, including granting Lessee an exclusive option on the Property to designate and lease the Site for purpose of developing, building, owning, operating and maintaining the Generating Facility thereon, and authorized the Chief Executive Officer to finalize, execute and deliver this Amended and Restated Solar Generating Facility Land Option and Lease Agreement to Lessee.

I. The Parties desire to amend and restate the Original Agreement on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

SECTION 1 - DEFINITIONS

1. Definitions.

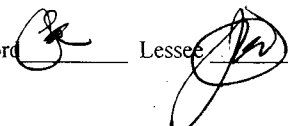
(a) “**Affiliate**” means when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

(b) “**Business Day**” means any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in New York, New York or Los Angeles, California.

(c) “**Collection and Transmission Facilities**” means all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, transmission lines, telecommunication lines, splice boxes and interconnection facilities.

(d) “**Energy**” means electric energy (alternating current, expressed in kilowatt-hours).

(e) “**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Entity during the Lease Term (as defined below), attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Environmental

Handwritten initials for Landlord and Lessee.

Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Lessee, any Affiliate, or any investor of Lessee to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(f) ***“Environmental Incentives”*** means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Entity during the Lease Term (as defined below) (i) investment tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (ii) production tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iii) accelerated depreciation attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to the Generating Facility, any Generating Facility Asset or Energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Lessee, any Affiliate or any investor of Lessee or its Affiliate.

(g) ***“Environmental Laws”*** means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Site, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

(h) ***“Generating Facility Assets”*** means each and all of the assets and Improvements of which the Generating Facility is comprised and installed on the Site, together with other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Generating Facility.

(i) ***“Governmental Entity”*** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or

other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(j) **“Hazardous Materials”** means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(k) **“Improvements”** means all facilities, structures, equipment, machinery, inverters, batteries, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of the Generating Facility on the Property, including, but not limited to, the Solar Panels, Transmission and Collection Facilities, Telecommunication Facilities, Substations, Operation and Maintenance Facilities, Weather Instruments and Roadway Improvements.

(l) **“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to the Agreement or the transaction contemplated thereby.

(m) **“Lessee’s Financing Parties”** means any Persons, and their successors and assignees, providing funding in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility.

(n) **“Operation and Maintenance Facility”** means the building and / or warehouse that is reasonably required by Lessee in connection with the operation and maintenance of the Generating Facility, including office space for employees and contractors and storage for equipment and inventory for the Generating Facility, together with any replacement, expansions, modifications, improvements or additions to any of the foregoing.

(o) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(p) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy output during the Lease Term (as defined below) created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

(q) **“Roadway Improvements”** means all Improvements that may be necessary to construct, maintain and repair any new and existing roadways and other means of ingress and



gress over, across and along the Property, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, installation of road signs and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities, as may be approved pursuant to a Conditional Use Permit for the Generating Facility.

(r) **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces, trackers, and related equipment.

(s) **"Substations"** means electrical lines, meters, monitoring and control equipment, switches, transformers, batteries and other devices for storage of electrical energy, all structures, equipment, enclosures, fencing, security devices, and other electrical and communications equipment necessary to condition and increase the voltage of electricity generated by the Generating Facility to make it suitable for transmission on, and to deliver it to, Collection Facilities connected to an electric power grid or other system.

(t) **"Telecommunication Facilities"** means all Improvements whose purpose is to provide telecommunication services solely relating to the Generating Facility or any of Lessee's solar powered projects, including telephone, closed-circuit television, microwave, internet, computer data and other telecommunication services.

(u) **"Weather Instrument"** means instruments used to gather and transmit sunlight and meteorological data relating to the Generating Facility, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

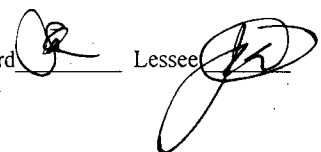
SECTION 2 - OPTION

2. Lease Option.

(a) **Option Grant.** Landlord hereby grants Lessee the exclusive option on the Property to designate the Site in writing to Landlord and to lease the Site upon the terms and conditions set forth herein ("**Lease Option**").

(b) Lessee shall have the right to exercise the Lease Option by delivering to Landlord separate written notices in accordance with the terms of this Agreement (each, an "**Exercise Notice**") at any time prior to the end of the Option Period (the "**Lease Option Termination Date**"), provided that (A) each Exercise Notice shall include evidence that Lessee, or any assignee or successor of Lessee, has been shortlisted or selected by a direct-access-service-provider, utility, community choice aggregator, industrial or commercial off-taker of Energy for a power purchase agreement, or that Lessee, or any assignee or successor of Lessee, is proceeding to commercial operation without a power purchase agreement, and (B) Lessee issue each Exercise Notice for that portion of the Site in an acreage that is no greater than the acreage necessary to develop, operate and produce Energy under such power purchase agreement upon that portion of the Generating Facility.

(c) **Option Period.** The Option period shall be until April 30, 2022 ("**Option Period**") unless earlier terminated pursuant to this Agreement.

Handwritten initials for Landlord and Lessee. The Landlord's initials are 'LR' and the Lessee's initials are 'JK'.

(d) **Escrow.** Immediately following full execution of this Agreement, the Parties shall open an escrow ("**Escrow**") relating to this Agreement and the transactions contemplated hereunder with Stewart Title, or other escrow company mutually acceptable to the Parties ("**Escrow Company**"). The Escrow will consist of up to four (4) sub-escrows (each, a "**Sub-Escrow**") which the Escrow Company shall establish for each Leased Site Portion (as defined below) with respect to which Lessee delivers to Landlord an Exercise Notice. All Escrow costs and expenses shall be borne solely by Lessee, unless specifically stated otherwise in this Agreement. Unless earlier closed as provided in Paragraph 2(i) below, Escrow on all Leased Site Portions shall terminate sixty (60) days following the end of the Option Period. Upon termination of the Escrow, Escrow Company shall return all refundable deposits to Lessee.

(e) **Title Report.** Within ten (10) days following the opening of Escrow, Lessee shall cause to be prepared a Preliminary Title Report ("**PTR**") together with a commitment for title insurance contemplating California Land Title Association (CLTA) standard coverage along with any requested endorsements ("**Commitment for Title Insurance**") as set forth below, issued by an insurance carrier(s) reasonably acceptable to Lessee. Lessee shall be responsible for all costs, expenses and premiums relating to the CLTA coverage. Lessee shall be responsible for all excess costs, expenses and premiums relating to the PTR. Within thirty (30) days from Lessee's receipt of the PTR, Lessee shall notify Landlord in writing of any liens, encumbrances and/or other title deficiencies that are not acceptable to Lessee as determined in Lessee's sole discretion ("**Title Deficiencies**") and Landlord shall use its best commercial efforts to eliminate any Title Deficiencies within ninety (90) days from receipt of written notice by Lessee. If Landlord has been unable to remove all Title Deficiencies to Lessee's satisfaction within the ninety (90) day period, despite having used best commercial efforts, then Lessee's sole and exclusive remedy for Landlord's failure to cure any Title Deficiencies shall be to either: (i) proceed with the Option (and accept the title with all uncured Title Deficiencies), (ii) terminate the Option with regard to the identified Site, or (iii) terminate the Agreement.

(f) **Memorandum.** Contemporaneously with the execution of this Agreement, Lessee shall prepare and Landlord shall sign and deliver to Lessee a notarized Memorandum of Amended and Restated Land Option and Lease Agreement ("**Memorandum**") that Lessee shall then deliver to the Escrow Company with the instruction to record the Memorandum against the Property with the County Recorder's Office where the Property is located.

(g) **Acreage.** The legal description and exact number of acres comprising each portion of the Site for which Lessee has delivered an Exercise Notice (each, a "**Leased Site Portion**") shall be determined prior to the Lease Commencement Date (as hereinafter defined), based on Lessee's notification to Landlord as to which portions of the Property Lessee will lease for purposes of developing the Generating Facility or for mitigation purposes. The legal description and exact acreage shall be obtained as a result of a survey to be ordered by Lessee at its sole cost and expense.

(h) **Subdivision.** If a Leased Site Portion or the Site does not constitute a legally transferable parcel or parcels pursuant to the Subdivision Map Act, then during the Option Period Lessee may, in its sole discretion and at its expense, elect to pursue subdivision of the Site parcel or parcels under the Subdivision Map Act in order to establish the Leased Site Portion or the Site as a legally transferable parcel or parcels under the Subdivision Map Act prior to the

Lease Commencement Date. If Lessee elects to pursue such subdivision, then Landlord agrees to provide Lessee with assistance with respect to such subdivision, including all necessary approvals thereof by Landlord and any applicable third parties.

(i) **Entitlements.** Lessee will endeavour to obtain certain entitlements (e.g., conditional use permits, grid interconnection and transmission agreements, power purchase agreements, and the like) necessary to develop and operate the Generating Facility, including development of a generation interconnection tie line. Landlord shall use reasonable commercial efforts to support Lessee in obtaining such entitlements. However, Lessee shall not change any attributes "running with the land," such as zoning, until after or concurrent with the first Lease Commencement Date or earlier with the prior written consent of Landlord. Lessee may enter into other agreements, such as interconnection and transmission agreements at Lessee's sole discretion. Lessee shall be responsible for all costs associated with its efforts to obtain any entitlements.

(j) **Sub-Escrow Closing and Conditions.**

(i) **Sub-Escrow Closing.** The closing of a Sub-Escrow for each Leased Site Portion (each, a "**Sub-Escrow Closing**") shall occur on a date set forth in the Exercise Notice related to such Leased Site Portion (each, a "**Sub-Escrow Closing Date**") but in no event shall such Sub-Escrow Closing Date occur later than one hundred and twenty (120) days from the date of the Exercise Notice.

(ii) **Conditions to Sub-Escrow Closing.** A Sub-Escrow Closing for each Leased Site Portion is subject to satisfaction of the following conditions:

(A) **Harvest Termination Notice.** If any portion of the Property with respect to which Lessee desires to deliver to Landlord an Exercise Notice is subject to a farming lease with a third party, Lessee's timely delivery of Harvest Termination Notice(s) pursuant to Paragraph 2(n) below.

(B) **Termination of Farming Lease and Vacation of Leased Site Portion(s).** Termination of the Farming Lease and Farming Lessee's vacation of the Leased Site Portion(s) pursuant to Paragraph 2(n) below.

(C) **Exercise Notice.** Lessee's delivery of Exercise Notice(s) pursuant to Paragraph 2(a), a legal description and survey of each Leased Site Portion pursuant to Paragraph 2(f).

(D) **Deposit of Security Deposit.** Lessee's deposit of the Security Deposit pursuant to Paragraph 5(f).

(E) **Option Payments.** Lessee is not in default with respect to its obligations under Paragraphs 2(o) and 2(p) below.

(F) **Compliance with Agreement.** Lessee is not in default under this Agreement.

(G) **Insurance.** Delivery by Lessee of one or more certificates of insurance evidencing coverage in accordance with Paragraph 22 below.

(H) **Memorandum of Land Option and Lease Agreement.** Recordation of the Memorandum of Amended and Restated Land Option and Lease Agreement pursuant to Paragraph 2(e) above; and preparation of a Memorandum of Agreement for recordation at Sub-Escrow Closing for each of the Leased Site Portions pursuant to Paragraphs 25(a) and (b).

(I) **Title Commitment.** Commitment by the title company to issue a title policy in favor of Lessee omitting all exceptions to title that were not approved by Lessee.

(J) **No Condemnation.** The absence of any pending or threatened condemnation or eminent domain proceedings affecting the applicable Leased Site Portion. Landlord shall disclose any condemnation action or other eminent domain proceedings with respect to the applicable Leased Site Portion.

(iii) **Notice to Satisfy Condition.** Lessee shall notify Landlord in writing of Landlord's failure to satisfy any condition to Sub-Escrow Closing Landlord is obligated to perform hereunder. If Landlord fails to satisfy any condition to Sub-Escrow Closing within thirty (30) days, Lessee shall have the right to terminate Escrow and Escrow Company shall return all refundable deposits to Lessee. Lessee may, however, at its sole discretion, cost and expense, remedy the defect, effectuate the Sub-Escrow Closing and commence the lease of the applicable Leased Site Portion.

(k) **Liens.** If any bank or other financial institution holds a lien encumbering the Leased Site Portion ("**Lienholder**"), Lessee shall have the right to remove such lien pursuant to the terms of this Paragraph 2(j). Landlord agrees to fully cooperate and hereby grants Lessee a power of attorney to effect such removal to the extent that Lessee determines it necessary for Lessee to build and operate the Generating Facility as contemplated by this Agreement. Lessee shall have the right, on Landlord's behalf, to modify and/or pay-off Landlord's deed of trust (or a portion thereof that releases the Site) with Lienholder, and any amounts paid by Lessee in connection therewith shall be credited against the Annual Rent due hereunder. Landlord shall not increase the loan balance encumbering the Site nor shall Landlord create any additional liens for the Site during the Option Period and Lease Term, except with Lessee's express prior written consent.

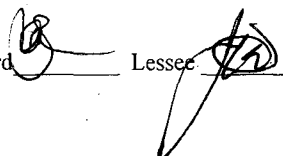
(l) **Site Access during Lease Option Period.** As of the Effective Date, Landlord grants to Lessee a non-exclusive right to access the Property in accordance with the terms and conditions hereinafter set forth ("**Site Access Right**") for purposes of conducting due diligence on the Property in conjunction with the development, design, planning and permitting of the Generating Facility. Landlord acknowledges and agrees that Lessee's due diligence activities may include soil and geological testing. Prior to entering the Property, any party conducting due diligence activities that requires access to the Site shall, upon Landlord's request, provide Landlord with proof of commercial general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, with such policy naming Landlord as additional insured.

(m) **Landlord's Documentation.** In addition to Landlord's disclosure obligations under this Agreement, Landlord agrees to provide to Lessee any and all additional relevant documentation related to the Property in Landlord's possession and to cooperate with Lessee in Lessee's due diligence activities on the Property.

(n) **Farming Lease.** Lessee acknowledges that Landlord has entered into a lease of the Property for farming purposes pursuant to that certain lease agreement ("**Farming Lease**") between Landlord and JKB Development, Inc., a California corporation ("**Farming Lessee**"). The Farming Lease provides that it shall terminate with respect to each Leased Site Portion concurrent with Lessee's delivery of an Exercise Notice for that Leased Site Portion during the Option Period, but that the Farming Lease shall continue according to its terms with respect to the acreage constituting the remainder of the Property. In no event shall Landlord and Farming Lessee amend the terms of the Farming Lease, or enter into a new lease, without 30 days prior written notice to Lessee. For each Leased Site Portion, Lessee shall notify Landlord and the Farming Lessee in writing of its intent to terminate the Farming Lease in accordance with this Agreement ("**Harvest Termination Notice**"). Following receipt of each Harvest Termination Notice, Landlord and Farming Lessee shall vacate the applicable Leased Site Portion within sixty (60) days of the delivery of the applicable Harvest Termination Notice. Prior to delivery of the Harvest Termination Notice, Lessee shall use commercially reasonable efforts to coordinate a vacation date with Farming Lessee in order to minimize any losses in connection with the harvest of Farming Lessee's crops on the Property with respect to which Lessee intends to deliver the applicable Exercise Notice. Lessee agrees and acknowledges that it shall be liable to Farm Lessee and Landlord, and shall reimburse the Farming Lessee, for any and all damages incurred by the Farming Lessee accruing out of the termination of the Farming Lease for each Leased Site Portion, said amount to be determined by Lessee and Farm Lessee and shall not exceed one (1) year of actual cultivation expenses (the "**Reimbursement Amount**") and Lessee shall deposit the Reimbursement Amount for the applicable Leased Site Portion with the Escrow Company as a condition of Sub-Escrow Closing. Landlord hereby assigns to Farming Lessee all of its right, title and interest to the aggregate Reimbursement Amount to be received from the Lessee, which amount shall be delivered by the Escrow Company to the Farming Lessee upon Sub-Escrow Closing. Except as provided herein, during the Option Period, Lessee shall not interrupt the operations of the Farming Lessee.

(o) **Option Termination.** Lessee shall have the right to terminate the Lease Option by written notice to Landlord with immediate effect at any time on or prior to the Lease Option Termination Date. Any Lease Option payments made by Lessee shall be non-refundable. Upon termination of the Lease Option by Lessee, the Parties shall have no further obligation under this Agreement with regard to the Lease Option. In the event of termination, Lessee agrees to promptly release or quitclaim all recorded notices and / or options. The terms and conditions relating to any Leased Site Portion shall be applicable until the end of the Lease Term.

(p) **Option Payments.** In consideration of the Lease Option and the Site Access Right during the Option Period, Lessee shall make to Landlord a quarterly Lease Option payment in the amount of Twenty Five Thousand Dollars (\$25,000), payable in advance, in quarterly installments, with the first prorated payment of the Lease Option payment due within ten (10) Business Days after the Effective Date and subsequent payments due on the first date of the next calendar quarter (January 1st, April 1st, July 1st and October 1st). Lessee and Landlord

Handwritten initials for Landlord and Lessee. The Landlord's initials are 'JKB' and the Lessee's initials are 'JKB'.

agree that during the Option Period Landlord shall continue receiving any and all income pursuant to the terms of the Farming Lease which income shall not constitute consideration under this Agreement.

SECTION 3 - LEASE

3. **Lease.** As of the Lease Commencement Date (as defined below) and only subject to Lessee's exercise of the Lease Option in accordance with Section 2 above, Landlord hereby leases each Leased Site Portion to Lessee upon the terms and conditions stated herein.

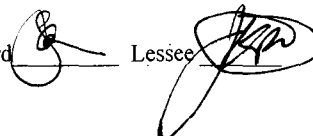
4. **Lease Term.**

(a) The initial lease term ("**Initial Term**") for each Leased Site Portion shall commence on the applicable Sub-Escrow Closing date for such Leased Site Portion (each a "**Lease Commencement Date**") and shall end for each Leased Site Portion on the 25th anniversary of the Lease Commencement Date for the last Leased Site Portion that constitutes the Site unless earlier terminated pursuant to this Agreement (the "**Lease Expiration Date**"). Lessee shall have the right to extend the Initial Term for all Leased Site Portions that constitute the Site for up to two (2) consecutive additional periods of five (5) years each (each such period, an "**Extension Term**," and, collectively with the Initial Term, the "**Lease Term**") following the Lease Expiration Date by giving Landlord written notice of its intent to extend the lease not later than one-hundred-eighty (180) days prior to the end of the Initial Term or the then current Extension Term, provided that as a condition to any Extension Term, Lessee shall have performed all of its payment obligations that become due prior to such Extension Term under the terms of this Agreement. In the event Lessee elects to exercise its right to extend the lease beyond the Initial Term, the terms and conditions in effect during the Initial Term shall be applicable during each Extension Term. If Lessee holds over in occupancy of the Site, or any portion thereof, after the end of the Lease Term, during such hold over period, Lessee shall be subject to the terms and conditions specified in this Agreement, so far as applicable.

(b) **Lessee's Termination Right.** The Parties agree that following the Lease Commencement Date for each Leased Site Portion (the "**Early Termination Period**"), Lessee shall have the right to terminate the Agreement (the "**Lessee's Termination Right**") for such Leased Site Portion. In the event Lessee elects to exercise Lessee's Termination Right, Lessee shall provide Landlord with at least ninety (90) days' advanced written notice of its intent to terminate the Agreement (the "**Termination Notice**") for such Leased Site Portion. Any and all Rent paid by Lessee to Landlord prior to the date of Termination Notice for such Leased Site Portion shall remain the property of Landlord. Within the ten (10) day period following the Termination Date, Lessee shall be obligated to file with the proper county recorder office notice of termination of this Agreement for such Leased Site Portion. Upon termination of this Agreement by Lessee for such Leased Site Portion, Lessee shall restore the Leased Site Portion in accordance with the provisions of Paragraph 19 below.

5. **Rent.**

(a) During the Lease Term, the Parties agree that Lessee shall pay Landlord an annual land payment for each Leased Site Portion in the amount of Six Hundred Sixty Dollars (\$660)

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per acre as determined by the legal description and survey pursuant to Paragraph 2(g) (“**Land Payment**”). In addition, Lessee shall pay Landlord an annual community benefit payment in the amount of Eighty Dollars (\$80) per acre as determined by the legal description and survey pursuant to Paragraph 2(g) (“**Community Benefit Payment**”). The Land Payment and the Community Benefit Payment shall be collectively referred to as the “**Annual Rent**”. Regardless of the total actual acreage, in no event shall the total Annual Rent be less than Seven Hundred Forty Thousand Dollars (\$740,000) plus applicable escalation pursuant to Section 5(c).

(b) The Annual Rent for each Leased Site Portion shall be payable in quarterly installments, with the first partial or full payment due on or before the respective Lease Commencement Date and subsequent payments due on or before the beginning of the next calendar quarter, defined as January 1st, April 1st, July 1st and October 1st.

(c) The Annual Rent for each Leased Site Portion shall increase each year on January 1 by an amount equal to one-half percent (0.5%) multiplied by the prior year’s Annual Rent for the duration of the Initial Term and each Extension Term, if applicable. Any amount of Quarterly Rent to Landlord shall be non-refundable.

(d) Within ten (10) days following the first occurring Lease Commencement Date, Landlord shall provide Lessee with Landlord’s bank account information, including wiring instructions, enabling Lessee to make timely payments in accordance with the terms of this Agreement. Landlord shall provide Lessee with a prompt written notice following any change in the bank account information that would prevent Lessee from making timely payments. In the event Landlord changes its bank account information and fails to provide Lessee with such new bank account information, then the deadline for any payment due and payable to Landlord under this Agreement shall be extended, without the application of Paragraph 5(e) below, to ten (10) Business Days from the time Lessee is provided with the new bank account information. Any late lease payments shall be subject to the provisions of Paragraph 5(e) below.

(e) **Security Deposit.** Along with the first payment of Quarterly Rent, Lessee shall make a one-time payment to Landlord of One-Hundred-Thousand Dollars (\$100,000.00), to be held by Landlord as a security deposit (“**Security Deposit**”) during the Lease Term. The Security Deposit shall be deposited by Landlord into the Stanislaus County Treasury, and all interest earned shall increase the Security Deposit. Landlord may, at its sole discretion, use the Security Deposit for payment of any delinquent amount required to be paid by Lessee, Landlord shall promptly notify Lessee in writing and Lessee shall replenish the Security Deposit to its original amount within thirty (30) days after receipt of Landlord’s written notice. Landlord shall return any unused amount of Security Deposit (including interest earned thereon) to Lessee within thirty (30) days after the Lessee completes its Restoration Obligation pursuant to Paragraph 19 below.

6. Permitted Use.

(a) During the Lease Term, Lessee shall use each Leased Site Portion and the Site solely to install, construct, operate, maintain, repair, improve, replace, relocate or remove Solar Panels, Collection and Transmission Facilities, Roadway Improvements, Substations,

Telecommunication Facilities and Weather Instruments for the Generating Facility and uses incidental thereto (collectively the "**Permitted Use**") and for no other business or purpose.

(b) Landlord grants Lessee an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Property ("**Sun Non-Obstruction Easement**"). Landlord shall not engage in any activity on the Property that interferes with the sunlight direction; cause a decrease in the output or efficiency of any Solar Panel or Weather Instrument; or otherwise interfere with Lessee's operation of the Generating Facility or the exercise of any rights granted in this Agreement ("**Interference**"). This grant of the Sun Non-Obstruction Easement expressly includes the right of Lessee to enforce Lessee's rights, including the physical removal of trees or structures causing Interference to the Generating Facility. Lessee shall notify Landlord before making any such removals. Lessee acknowledges that Landlord operates the existing Fink Landfill to the south of the Property and accepts the public need for unrestricted operation of the landfill with respect to the uses allowed under this Agreement. The Fink Road Landfill and any future expansions of the Landfill shall not be subject to the terms of this subsection.

(c) Landlord grants to Lessee a non-exclusive easement over the Property for visual, view, light, noise, shadow, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Generating Facility located on the Property ("**Effects Easement**").

(d) Lessee shall comply with the terms and conditions of all land use permits which may be issued for the Property. Lessee shall adhere to the Stanislaus County Right to Farm Ordinance (County Code section 9.32.050) and shall execute a Stanislaus County Right to Farm Notice.

(e) Nothing in this Agreement shall be deemed to give Lessee the right to sell any goods or services or engage in any other activities other than those stated herein.

(f) Lessee shall pay the fees, including public facility fees, in effect at the time of building permit issuance.

(g) Lessee shall obtain Landlord approval prior to erecting any signage upon the Site. Lessee shall not cause or allow the display of billboards or advertisements upon the Site. Security of the Site shall be the responsibility of Lessee.

(h) Within sixty (60) days of the Lease Commencement Date, Lessee shall submit a weed management plan to the Landlord for approval. Lessee shall comply with the approved weed management plan.

7. Mineral, Water & Access Rights and Utilities.

(a) **Ownership and Use by Landlord.** The Parties agree that Landlord shall retain all mineral rights (the "**Mineral Rights**") and water rights ("**Water Rights**") in connection with the Site owned by Landlord as of the Effective Date with the limitation during the Option Period and the Lease Term that Landlord shall have the right to exercise such Mineral Rights and Water Rights only to the extent such exercise does not interfere with Lessee's Permitted Use. During

the Option Period and Lease Term, Landlord shall have no right to enter the Site for exploitation of Mineral Rights or Water Rights, or both, without Lessee's prior written consent, which shall not be unreasonably withheld.

(b) **Water.** Lessee shall comply with the mitigation monitoring plan, as may be applicable, as part of a land use application to Stanislaus County and will prepare a Water Demand and Supply Plan prior to initiating any ground-disturbing activities to identify a stable supply of water. Lessee is solely responsible for any costs or expense of procuring any water required by Lessee for Lessee's construction or operations. Landlord will provide reasonable assistance to Lessee in its efforts to identify and secure water, but has no obligation to provide Lessee with water or to develop groundwater wells or water conveyance improvements.

(c) **Access.** Lessee shall have the rights of ingress to and egress from the Site for Lessee and Lessee's employees, guests, contractors, agents, representatives and invitees, by existing access routes and other reasonable and adequate routes of travel designated from time to time by the Landlord, including existing roads and other routes through property owned by Landlord that adjoins the Property that would allow the Persons listed in this sentence to access the Site.

(d) **Utilities.** Lessee agrees to pay, or cause to be paid, all charges which are incurred by Lessee for gas, water, electricity, light, heat or power, telephone or other communication service use, or other utility use, rendered or supplied upon or in connection with the Site. Lessee shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Site of wires, pipes, conduits and other equipment for the supply of utilities to the Site.

8. **Sublease.** Lessee may sublease all or any portion of the Site to any Person, provided that any sub-Lessee shall use the Site only for a Permitted Use. Lessee shall include in any sublease a requirement that the sublessee maintain commercial general liability insurance and name the Landlord as additional insured. Said liability insurance shall meet the requirements of Paragraph 22 below.

9. **Taxes.**

(a) Pursuant to the provisions of the California Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Site or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any improvements, fixtures or personal property located on the Site, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Site.



(b) Landlord shall not be obligated to pay any taxes or assessments accruing against Lessee on any Leased Site Portion or any interest therein during the Lease Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. To clarify, Landlord is responsible for (a) all property taxes during the Option Period; (b) during the Lease Term, all property taxes excluding any Leased Site Portion.

(c) Within thirty (30) Business Days after each Lease Commencement Date, the Parties shall submit to the County a "Statement of Separate Ownership" under California Revenue and Tax Code 2188.2 specifying their respective interests in the Property. Each Party shall notify the Stanislaus County Tax Assessor and Tax Collector of the proper address for its respective tax bill. Landlord shall submit the real property tax bill to Lessee within ten (10) days after Landlord receives the bill from the taxing authority. Lessee shall pay its portion of the real property taxes directly to the taxing authority. Landlord shall pay its portion of the real property taxes, and if Landlord fails to do so prior to any delinquency date, Lessee shall be entitled (but not obligated) to make payments, including any late penalties, in fulfillment of Landlord's obligations to the taxing authority and may offset the amount of such payments from amounts due Landlord under this Agreement.

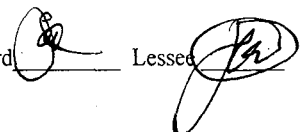
(d) As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Site, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Site.

10. Allocation of Sales and Use Tax Revenues. Lessee shall take the following actions in connection with the construction of the Generating Facility ("**Project**") or other activities attributable to the Project that are subject to sales or use taxes ("**Project Activities**"):

(a) Lessee shall contractually require that its engineering and construction contractor(s) and subcontractor(s) (collectively, "**Development Contractor**"), perform all of the following to the extent permitted by law and consistent with Section 260.020 of the California Board of Equalization ("**BOE**") Compliance Policy and Procedures Manual and any other requirements of the BOE:

(i) Register as a Seller with the BOE and designate the Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to the Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities or, if already registered as a Seller, register for a Sub-permit for the Project jobsite. The Development Contractor shall be required to provide a copy of its Seller's Permit or Sub-permit, showing the Project jobsite as the business location (or sub-location), to Lessee and Landlord, within ten (10) days of the effective date of the respective contract or agreement.

(ii) Accrue and report all sales and use taxes payable that are attributable to the Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities

Handwritten initials for Landlord and Lessee. The Landlord initials are 'JL' and the Lessee initials are 'JR'.

and attribute all such sales and use taxes to Stanislaus County, including on Schedule C of BOE Form 530.

(iii) Issue resale certificates and report the Lessee's business location (or sub-location) for all sales of fixtures and materials furnished in connection with the Project.

(iv) Authorize Landlord to share with Lessee, all information reported to Landlord concerning sales and use taxes paid by the Development Contractor related to the Project.

(v) Report to Lessee, not later than forty-five (45) days after the end of each calendar quarter which it has engaged in Project Activities the amount of sales and use taxes reported on its Combined State and Local Sales and Use Tax Return related to the Project for that calendar quarter.

(b) Contracts in Excess of \$5 Million. For any Project Activities in which the contract or sub-contract exceeds Five Million dollars (\$5,000,000.00) ("Large Contract"), Lessee shall contractually require that its Development Contractor perform and contractually require in any sub-contract for Project Activities the following:

(i) Fixtures. If the Large Contract involves furnishing fixtures (as defined in applicable BOE Regulations; see, for example, Sales and Use Tax Regulations §§ 1521, 1806 and 1826), that the Development Contractor perform all of the following to the extent permitted by law and consistent with § 260.020 of the California Board of Equalization ("BOE") Compliance Policy and Procedures Manual and any other requirements of the BOE:

1) Register as a Seller with the BOE and designate the Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities or, if already registered as a Seller, register for a Sub-permit for the Project jobsite. The Development Contractor shall be required to provide a copy of its Seller's Permit or Sub-Permit, showing the Project jobsite as the business location (or sub-location), to Lessee and the Development Contractor within ten (10) days of the effective date of the Development Contract.

2) Accrue and report all sales and use taxes payable that are attributable to the Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities and attribute all such sales and use taxes to Stanislaus County, including on Schedule C of BOE Form 530.

3) Issue resale certificates and report the Lessee's business location (or sub-location) for all sales of fixtures furnished in connection with the Project to the jobsite.

4) Authorize Landlord to share with Lessee, and the Development Contractor all information reported to Landlord concerning sales and use taxes paid by any subcontractor related to the Project.

5) Report to Lessee and the Development Contractor, not later than

forty-five (45) days after the end of each calendar quarter during which it has engaged in Project Activities, the amount of sales and use taxes reported on its Combined State and Local Sales and Use Tax Return related to the Project for that calendar quarter. Lessee shall provide a copy of the quarterly report, or Schedule C form, to the Landlord within ten (10) days of receipt.

(ii) Materials. If the Large Contract involves furnishing of materials (as defined in the applicable BOE Regulations; see, for example, Sales and use Tax Regulations §§ 1521, 1806 and 1826), that the Development Contractor perform all of the following to the extent permitted by law and consistent with § 260.020 of the California Board of Equalization ("BOE") Compliance Policy and Procedures Manual and any other requirements of the BOE.

1) Register either as a Consumer or a Seller with the BOE and designate the Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to the Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities. If the Development Contractor is already registered with the BOE as a Seller, it shall register for a Subpermit for the Project jobsite. If the Development Contractor is already registered with the BOE as a Consumer, it shall report all taxes for materials used in the Project to the Project jobsite location. The Development Contractor shall be required to provide a copy of its Seller's or Consumer's Permit or Sub-Permit, showing the Project jobsite as the business location (or sub-location), to Lessee, and the Development Contractor, within ten (10) days of the effective date of the contract or subcontract.

2) Accrue and report all use taxes payable that are attributable to the Project on the Development Contractor's Sale and Use Tax Returns for all Project Activities as follows:

(A.) If registered as a Consumer, accrue and report all purchases related to the Project that are subject to use tax on the Development Contractor's Sales and Use Tax Returns for all Project Activities and attribute all such taxes to Stanislaus County.

(B.) If registered as a Seller: (a) If the Large Contract is on a lump sum or fixed price basis, accrue and report all sales and use taxes payable that are attributable to the Project on the Development Contractor's Sales and Use Tax Returns for all Project Activities and attribute all such sales and use taxes to Stanislaus County, including on Schedule C of BOE Form 530; (b) If the Large Contract is on a time and materials plus tax basis issue resale certificates and report the Lessee's business location (or sub-location) all sales of fixtures furnished in connection with the Project to the jobsite.

(C.) Authorize Landlord to share with Lessee, and the Development Contractor all information reported to Landlord concerning use taxes paid by the contractor or subcontractor related to the Project.

(D.) Report to Lessee, and the Development Contractor not later than forty-five (45) days after the end of each calendar quarter during which it has engaged in Project Activities the amount of taxes reported on its Combined State and Local Sales and Use Tax Return related to the Project for that calendar quarter.

(iii) Fixtures and Materials. If the Large Contract involves furnishing of both

fixtures and materials (as defined in applicable BOE Regulations), that the Development Contractor perform all of the requirements set forth in Sections C.1.(b)(i) and (ii) above to the extent permitted by law.

11. Ownership of Generating Facility.

(a) Landlord acknowledges and agrees that, notwithstanding that the Generating Facility or any Generating Facility Asset may be considered as a fixture on the Site, Lessee or its Affiliate, successor or assignee is the exclusive owner of the Generating Facility, and that the Generating Facility may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a "**Transfer**") with the fee interest to the Site or otherwise by Landlord. Landlord shall give Lessee at least thirty (30) days' written notice prior to any transfer of all or a portion of the fee interest in the Site identifying the transferee, the portion of Site to be transferred and the proposed date of Transfer.

(b) Landlord agrees and acknowledges that the Generating Facility and all Generating Facility Assets shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Lease Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws.

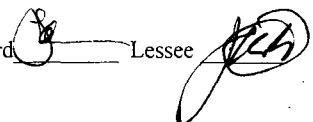
(c) Landlord acknowledges that Lessee or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by the Generating Facility and owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Generating Facility.

12. Notice of Non-Responsibility.

(a) **General.** Lessee shall provide Landlord with a written notice of any work of improvement (the "**Work of Improvement**") being conducted by Lessee or on Lessee's behalf on the Site within ten (10) days from the start thereof. For the purposes of this Agreement, the term "Work of Improvement" includes but is not restricted to the work performed by Lessee or on Lessee's behalf on the Site that constitutes the construction, alteration, addition to, repair, or removal, in whole or in part of the Generating Facility.

(b) **Recordation of Notice of Non-Responsibility.** Within ten (10) days after Landlord's receipt of the notice referred to in Paragraph 12(a) above, Landlord shall record a notice of non-responsibility in the office of the county recorder of the county in which the Site is located.

(c) **Liens.** Lessee shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanic's, labor or materialman's lien), charge security interest, encumbrance or claim of any nature (together and separately "Lien" or "Liens") on or with respect to Landlord's interest in the real property consisting of any Leased Site Portion. Lessee shall hold Landlord harmless from any Liens, including the cost of defense. In the event a Lien is filed against any Leased Site Portion, Lessee shall resolve the associated claim within sixty (60) days of the filing thereof. In the event Lessee is unable to resolve such claim within the sixty (60) day period and elects to contest the claim and the Lien associated

Handwritten initials for Landlord and Lessee. The Landlord's initials are 'JL' and the Lessee's initials are 'JLH'. Both are written in black ink over horizontal lines.

therewith, then Lessee shall obtain a bond to cover the Lien in the event Lessee is unsuccessful in its contest and as a result is unable to satisfy its payment obligations.

13. Landlord's Representations and Warranties; Covenants of Landlord. In order to induce Lessee to enter into this Agreement, Landlord covenants, represents and warrants, as of the Effective Date and throughout the Option Period and Lease Term of this Agreement, as follows:

(a) There are no liens, mortgages or security interests on the Property, except those liens ("**Property Liens**") stated on the "**Schedule of Property Liens**," attached hereto as **Exhibit B**, or as identified in the PTR for each applicable Parcel.

(b) Landlord is the owner of fee simple title of the Property and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage affecting the Site.

(c) Landlord covenants that Landlord has lawful title to the Property and full right to enter into this Agreement and that Lessee shall have quiet and peaceful possession of the Site.

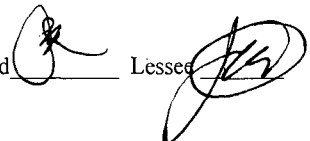
(d) Landlord has received no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Property or any part thereof in lieu of condemnation.

(e) To Landlord's knowledge, there are no unrecorded easements, leases or agreements affecting the Property that might prevent or adversely affect the use or occupancy of the Site by Lessee for operation of the Generating Facility.

(f) There are no circumstances known to Landlord and commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facility or its construction, installation or function (including activities that may adversely affect the Generating Facility's exposure to sunlight).

(g) To Landlord's knowledge, there are no Hazardous Materials present at the Property and Landlord has no knowledge of any violation of Environmental Laws relating to the Property. Landlord has no knowledge of any underground storage tanks located on the Property. Landlord has not manufactured, introduced, released or discharged from or onto the Property, the soil or the groundwater any Hazardous Materials nor permitted the same, and Landlord has not used or permitted the use of the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Lessee acknowledges that the Property has been used for agricultural purposes and may contain chemicals lawfully used for such agricultural purposes.

(h) There is no claim, litigation, proceeding or governmental investigation pending or so far as is known to Landlord, threatened against or relating to Landlord or the Property which is in conflict with this Agreement or which could have a material adverse impact upon the Permitted Use.

Handwritten signatures of the Landlord and Lessee, written over the printed labels "Landlord" and "Lessee" respectively.

(i) Landlord shall remain current with respect to (i) the payment of all property taxes, fees and special assessments levied against the Property, and (ii) hazard and liability insurance coverage related to the Property.

(j) The Property is not subject to any Land Conservation Contract executed pursuant to Section 51200 et seq., of the California Government Code, commonly referred to as the "Williamson Act."

(k) Landlord covenants and agrees not to take any action, including entering into any lease or easement agreements, that would encumber the Property without the prior written consent of Lessee, which shall not be unreasonably withheld.

(l) Landlord acknowledges that PG&E may seek to acquire a portion of the Property for substation purposes.

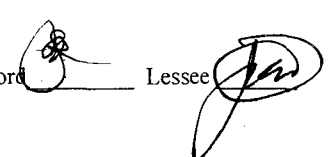
14. Subordination; Non-Disturbance Agreement.

(a) If there is a Landlord Mortgage encumbering the Property, Landlord shall cooperate with Lessee to obtain a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") in the form prepared and provided by Lessee, from each Lessee Mortgagee, pursuant to which such Landlord Mortgagee agrees, among other things, not to disturb Lessee's possession and use of the Property or Lessee's rights hereunder, which shall be in form and substance reasonably acceptable to Lessee. Lessee shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which the Property is located. If Landlord fails to deliver a SNDA from each Landlord Mortgagee, Lessee may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Landlord, or (ii) take such action as Lessee deems reasonably necessary to effect the rights granted to Lessee hereunder, and off-set all amounts expended in such efforts against the Annual Rent and any other amounts due hereunder or in respect hereof.

(b) In the event Landlord's default under the terms of any applicable Mortgage could lead to the foreclosure on the Property, Landlord agrees to provide Lessee with an immediate notice of any applicable Mortgagee's oral or written intent to foreclose on the Property allowing Lessee to cure Landlord's default if Landlord is unable or unwilling to do so. Lessee shall be entitled to off-set all amounts expended to cure such default against the Annual Rent and any other amounts due hereunder or in respect hereof.

15. Condemnation.

(a) In the event any portion of the Site is taken by eminent domain or otherwise by way of condemnation and such taking causes any material interference with Lessee's Permitted Use of the Site, then Landlord shall, at its expense, using commercially reasonable efforts, within three (3) months after such condemnation event, repair and restore the remainder of the Site to a condition that allows Lessee's continued Permitted Use of the Site as provided in this Agreement. Lessee waives any rights for compensation or damages by reason of condemnation of a portion of the Property for substation purposes.

Handwritten initials for Landlord and Lessee. The Landlord initials are a stylized 'L' and 'D' inside a circle. The Lessee initials are a stylized 'J' and 'L' inside a circle.

(b) Subject to any Lessee Mortgagee rights, Lessee may terminate this Agreement effective as of the date of such condemnation event, if the condemnation award paid or payable to Landlord for the taking of the Site is insufficient to restore the Site as provided in Paragraph 15(a) above. Landlord shall so notify Lessee within thirty (30) days after the date of such casualty event. In the event of a termination pursuant to this Paragraph 15(b), no amounts shall be due from either Party to the other Party.

(c) Landlord and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion of the Site shall belong to Landlord, (ii) all condemnation awards payable in connection with the taking of the Agreement, the Generating Facility, or any Generating Facility Asset due to condemnation of the Site shall belong to Lessee, and (iii) Lessee shall have the right to file any separate claim available to Lessee related to the taking of the Agreement, the Generating Facility, or any Generating Facility Asset.

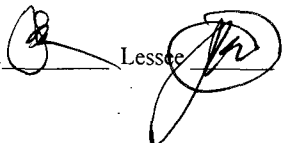
16. Quiet Enjoyment. Landlord covenants that Lessee shall peaceably and quietly have, hold and enjoy any Leased Site Portion and the Site during the Lease Term and Landlord shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through Landlord. During the Lease Term, Landlord shall have the right to enter the Site with reasonable frequency, during daylight hours, by giving Lessee three (3) days' advance notice (phone, e-mail or regular mail is acceptable) and provided that while at the Site Landlord shall be accompanied by a Site manager and obey all required safety rules and regulations. From time to time, Lessee shall provide Landlord with contact information for Site visit requests, and Landlord agrees to direct all such requests to Lessee's designated contact. The preceding three (3) day notice requirement shall not apply in emergency situations which reasonably require immediate access to the Site by Landlord.

17. Compliance with Laws. During the Lease Term, Lessee shall act pursuant to this Agreement in accordance with applicable federal, state, and local Laws. Lessee shall comply with all Laws pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, worker's compensation insurance, and discrimination in employment.

18. Lessee's Representations and Warranties. Lessee represents and warrants that, during the Option Period and Lease Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by the Landlord:

(a) Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Site by Lessee, its agents, employees, assigns, contractors or invitees, except as allowed by Lessee's Permitted Use of the Site, unless Lessee obtains the prior written consent of Landlord to bring, keep or use Hazardous Materials in or about the Site.

(b) Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Site following the Lease Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

Handwritten initials for Landlord and Lessee. The Landlord initials are 'L' and 'D' inside a circle. The Lessee initials are 'L' and 'S' inside a circle.

(c) Lessee assumes and shall retain all liability or responsibility for any environmental response, remediation, or cleanup required as a result of environmental impacts or damage arising from or resulting from any leaks, spills, release, discharge, emission or disposal of Hazardous Materials by Lessee which occurs on the Site following the Lease Commencement and any such discharge shall be promptly reported in writing to Landlord, and to any other appropriate governmental regulatory authorities. Lessee does not assume any, and Landlord shall retain all, liability or responsibility for any environmental response, remediation, or cleanup required as a result of environmental impacts or damage arising from Landlord's past use, storage, or release of Hazardous Materials on any portion of the Site occurring prior to the Lease Commencement Date. Landlord has no obligation and shall not assume any obligations or liabilities, and Lessee shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action, including without limitation those made by third parties, whether in existence now or brought in the future, to the extent arising out of the lessee's use; storage or release of any Hazardous Materials on, or from any part, of the Site, which occurred after the Lease Commencement Date. Lessee has no obligation, and shall not assume any obligations or liabilities, and the Landlord shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action, including without limitation those made by third parties, whether in existence now or brought in the future, to the extent arising out of the Landlord's use, storage or release of any Hazardous Materials on, or from any part, of the Site, which occurred prior to the Lease Commencement Date.

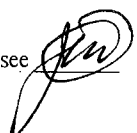
(d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee within the Site.

(e) Within ten (10) Business Days following construction on the Site of underground improvements, including, but not limited to, treatment or storage tanks, or water, gas or oil wells, Lessee shall provide Landlord with a written notice describing the underground improvement that has been constructed on the Site. Underground Collection Facilities and underground Telecommunication Facilities shall be shown on the final "As-Built" survey which shall be delivered to the Lessor within 90 days of substantial completion of the underground work. All underground work shall be accurately located and shall be verified weekly as the construction proceeds.

(f) Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Site in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of Landlord.

(g) Lessee shall promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.

(h) Lessee shall promptly notify Landlord of any liens threatened or attached against the Site pursuant to any Hazardous Materials' Law. If such a lien is filed, then within twenty (20) days following such filing or before any governmental authority commences proceedings to



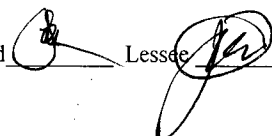
sell the Site pursuant to the lien, whichever occurs first, Lessee shall either: (i) pay the claim and remove the lien from the Site; or (ii) furnish either (1) a bond or cash deposit reasonably satisfactory to Landlord in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to Landlord in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of the Lease Term, Lessee shall surrender the Site to Landlord free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Site.

(i) Lessee shall implement mitigation measures that may be identified during the environmental review process under the California Environmental Quality Act ("CEQA") associated with the application for a conditional use permit for a solar energy generation and storage system to be installed in accordance with the terms of this Lease. Lessee agrees to take commercially reasonable efforts to cooperate with Lessor to maintain and prepare the Property for potential use as mitigation lands for potential effects of any future expansion of the Fink Landfill, provided that such efforts do not affect the operation of the facility, including but not limited to the generation, storage and transmission of electricity.

19. AS-IS Lease. Lessee acknowledges and agrees that: (i) prior to a Sub-Escrow Closing for an applicable Leased Site Portion, in Lessee's discretion, Lessee shall inspect the Leased Site Portion and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by leasing the Leased Site Portion, Lessee shall be deemed to have approved of all such characteristics and conditions; and (iii) the Leased Site Portion and the improvements thereon are to be leased to, and accepted by Lessee in their condition as of the Lease Commencement Date, "AS IS," "WHERE IS" and "WITH ALL FAULTS" with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials (except to the extent that the Landlord is aware of but does not disclose such conditions), and no patent or latent defect or deficiency in the condition of the Site or the improvements thereon whether or not known or discovered, shall affect the rights of either Landlord or Lessee hereunder. Lessee shall rely solely upon its own independent investigation concerning the physical condition of the Leased Site Portion and its compliance with applicable statutes, ordinances, rules and regulations. Landlord shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Leased Site Portion to the extent that Lessee is constructing improvements on the Leased Site Portion. If following the Lease Commencement Date, the condition of the Leased Site Portion is not in all respects entirely suitable for the uses to which the Leased Site Portion will be put pursuant to this Lease, then it shall be the sole responsibility and obligation of Lessee to correct any defect including soil, subsurface or structural conditions, reconstruct any improvements, and otherwise put the Leased Site Portion in a condition suitable for the Generating Facility to be developed pursuant to this Lease. The Lessee hereby waives any right to seek reimbursement from the Landlord for costs Lessee incurs in connection with the correction of any physical condition on the Leased Site Portion.

20. Site Restoration.

(a) Upon expiration of the Lease Term or the earlier termination of this Agreement, Lessee shall, after receipt of written notice from Landlord to Lessee to proceed ("**Restoration**

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NTP”), at Lessee’s sole cost and expense, restore the Site to the same condition as it was on the Lease Commencement Date, normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and water improvements excluded, by removing from the Site (a) the Generating Facility and any associated equipment or other personal property owned by Lessee, and (b) all subterranean foundations, cables, conduits or similar equipment installed by Lessee down to five (5) feet (“*Restoration Obligation*”). Notwithstanding the foregoing, Lessee shall not be obligated to change the then-current zoning for the Site to the zoning in effect as of the Lease Commencement Date. Landlord shall deliver the Restoration NTP not more than one hundred eighty (180) days after expiration of the Lease Term or earlier termination of this Agreement.

(b) Landlord hereby grants to Lessee and its contractors, representatives and agents a license to enter upon the Site to perform Lessee’s Restoration Obligation for the duration of one hundred eighty days (180) after delivery of the Restoration NTP to Lessee. All restoration work shall be done by a bonded restoration contractor and based on a contract in form and substance as reasonably approved by Lessee and Landlord. Lessee hereby indemnifies Landlord from and against any and all claims made against Landlord as a result of the restoration work performed by Lessee or its contractors on the Site.

(c) Prior to commencement of construction of the Generating Facility, Lessee shall obtain and deliver to Landlord a restoration bond, or similar financial assurance, in form and substance reasonably satisfactory to Landlord (the “*Restoration Bond*”) securing performance of Lessee’s obligation, whether upon expiration of the Lease Term, exercise of a termination right granted hereunder or other termination of this Agreement, to remove the Generating Facility and all other improvements made to and located on the Site. The Restoration Bond shall be in an amount of not less than two hundred fifty thousand Dollars (\$250,000.00), which amount shall be increased by five percent (5%) (non-compounding) on every third anniversary of the initial Restoration Bond issuance date. Once in place, Lessee shall keep such Restoration Bond, or similar financial assurance, in force throughout the remainder of the Lease Term of this Agreement. Landlord shall be permitted to draw upon such Restoration Bond or other financial assurance in the event that Lessee fails to remove the Generating Facility and other improvements and restore the Site as required pursuant to the terms of this Agreement.

(d) Notwithstanding anything to the contrary in Paragraph 10 above, should Lessee fail, within 180 days after the date of the Restoration NTP to remove any portion of the Generating Facility from the Site, Lessee shall be deemed to have abandoned any portion the Generating Facility remaining on the Site and Landlord shall have the right to possess the Generating Facility or remove the Generating Facility from the Site at Lessee’s sole cost and expense.

21. Liability and Indemnity

(a) **Lessee Indemnity.** Lessee shall indemnify, defend with counsel reasonably acceptable to Landlord, and hold harmless Landlord, its shareholders, directors, officers, agents, employees, volunteers and representatives (the “*Landlord Indemnitees*”) from any claim, demand, lawsuit, or action of any kind (each, a “*Claim*” and collectively, “*Claims*”) for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage

or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of: (i) Lessee's use of the Site; (ii) the operation of the Generating Facility; (iii) the alteration, work, or actions taken on or about the Site; or (iv) the material breach by Lessee of any of its obligations under this Agreement regardless of whether a Claim is caused in part by the negligent act or omission of the Landlord. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such Claims, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Paragraph 21(a) shall not extend to Claims for liability to the extent attributable to the sole negligence or wilful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties. Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees.

(b) **Landlord Indemnity.** Landlord shall indemnify, defend and hold harmless Lessee, its members, directors, officers, agents, employees, volunteers and representatives (the "*Lessee Indemnitees*") from all Claims, to the extent caused by: (i) the sole negligence or wilful misconduct of Landlord or any of the Landlord Indemnitees, or (ii) any breach by Landlord of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Landlord's obligations pursuant to this Paragraph 21(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or wilful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties. Landlord shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees.

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

(d) **Waiver.** The express remedies and measures of damages provided for in this Agreement shall be the sole and exclusive remedies for a party hereunder and all other remedies or damages at law or in equity are hereby waived.

22. Insurance.

Throughout the Lease Term, Lessee shall, at Lessee's sole cost and expense, keep in force the following insurance coverage:

(a) **Commercial General Liability Insurance.** Lessee and all contractors working on behalf of Lessee shall maintain commercial general liability coverage in the amount of one

million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Landlord as additional insured.

(b) **Automobile Insurance.** Lessee and all contractors working on behalf of Lessee shall maintain business automobile liability coverage in the amount of one million dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Landlord as additional insured.

(c) **Builder's Risk and Flood Insurance.** Upon commencement of any construction and continuing until issuance of a certificate of substantial completion pursuant to an agreement between Lessee and a contractor for the construction of the Generating Facility, Lessee and all contractors working on behalf of Lessee shall maintain builder's all-risk insurance in an amount not less than the probable maximum loss value for such applicable phase of the Generating Facility located on the Site. Said builder's all-risk insurance shall be on a probable maximum loss basis. Upon completion of the construction of the Generating Facility, Lessee shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for one hundred percent (100%) of the probable maximum loss value of each phase of the Generating Facility with deductible, if any.

(d) **Pollution Liability.** Pollution Liability with limits no less than \$1,000,000 per occurrence or claim, and \$1,000,000 policy aggregate.

(e) **Worker's Compensation.** Lessee and all contractors with whom Lessee has contracted for the performance of work on the Site shall maintain workers' compensation insurance for statutory obligations as required by law.

(f) **Umbrella/Excess Liability.** Lessee shall maintain Umbrella/Excess Liability insurance on a follow form basis, in the amount of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate, providing additional limits for (a) Commercial General Liability Insurance, (b) Automobile Insurance, and (d) Pollution Liability Insurance as required above.

(g) **Additional Requirements.** Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII or such other rating as approved by Landlord. The Commercial General Liability and business automobile liability policies required hereunder shall name Landlord as an additional insured. Prior to commencement of construction work, Lessee shall furnish Landlord with certificates of insurance in an ACORD form or other form acceptable to Landlord evidencing the required insurance coverage and endorsements evidencing such additional insured status, if applicable. The certificates shall contain a statement of obligation on the part of the carrier to notify Landlord of any cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such cancellation, termination or non-renewal. Coverage provided by Lessee shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Landlord. The insurance policies shall contain a waiver of subrogation for the benefit of

Landlord. Lessee shall furnish the required certificates and endorsements to Landlord within the time provided herein.

(h) **Performance and Payment Bond(s).**

(i) Prior to commencement of any phase of work on the Generating Facility, Lessee shall cause Lessee's contractor to deliver to Landlord copies of payment bond(s) and performance bond(s) or other surety instrument issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for such phase of the Generating Facility, or a portion of the Generating Facility with prior written approval by Landlord

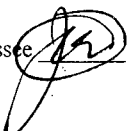
(ii) In lieu of such performance and payment bonds, Lessee may submit evidence satisfactory to Landlord of Lessee's ability to commence and complete the construction of that particular phase of the Generating Facility in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, a completion guaranty in a form and from a guarantor acceptable to Landlord or other revenue bonds sufficient for the purposes of this Paragraph. Such evidence must be submitted in approvable form in sufficient time to allow Landlord to review and approve the information prior to the start of construction.

23. Assignment.

Each Party (each, an "**Assignor**") shall have the absolute right to assign this Agreement in its entirety or any of its rights, duties and/or obligations hereunder to (i) a purchaser of the Property in the case of Landlord, or (ii) any third party in the case of Lessee (in either case, hereafter referred to as the "**Assignee**"), provided, that such Assignee assumes in writing all of Assignor's rights, duties and obligations hereunder in the form substantially similar to **Exhibit C** ("**Assumption Agreement**"). Upon the assignment made in accordance with this Paragraph, Assignor shall deliver to the other Party a written notice of such assignment within ten (10) Business Days of the effective date thereof, and such notice shall be accompanied by a fully executed copy of the Assumption Agreement. As of the assignment date, all references to "Lessee" or "Landlord" herein, as applicable, shall refer to the Assignee. For the avoidance of doubt, any assignment made to an Assignee in contravention to this Paragraph shall be deemed null and void and shall not relieve the Assignor of any of its duties or obligations hereunder.

24. Financing.

(a) **Right to Mortgage.** Lessee may, upon written notice to Landlord, but without requiring Landlord's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement and Lessee's interests in any Leased Site Portion (collectively referred to as "**Lessee's Property**"). These various security interests in all or a part of this Agreement and the Lessee's Property are collectively referred to as a "**Lessee Mortgage**" and holder of such security interest, a "**Lessee Mortgagee**." Any Lessee Mortgagee shall use the Lessee's Property only for the uses permitted under this Agreement. Whenever Lessee has granted a security interest under this section, it will give Landlord notice of the Lessee Mortgage (including the name and address of the Lessee



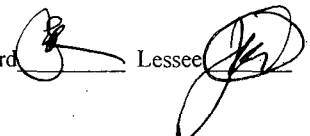
Mortgagee for notice purposes) to Landlord within thirty (30) days; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Landlord to provide such Lessee Mortgage notice until the Lessee and its address is given to Landlord.

(b) **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Lessee under this Agreement, Landlord shall give written notice of the default to each Lessee Mortgagee at the same time it delivers notice of default to Lessee, specifying in detail the alleged event of default and the required remedy. Each Lessee Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Lessee, and/or the right, but not the obligation, to remove any Improvements or other property owned by Lessee or such Lessee Mortgagee located on the Property to the same extent as Lessee. The cure period for any Lessee Mortgagee shall be the later of (i) the end of the Lessee cure period; (ii) thirty (30) days after such Lessee Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided below. Failure by Landlord to give a Lessee Mortgagee notice of default shall not diminish Landlord's rights against Lessee, but shall preserve all rights of the Lessee Mortgagee or its designee to cure any default and to remove any Improvements or other property of Lessee or the Lessee Mortgagee located on the Property.

(c) **Extended Cure Period.** If any default by Lessee under this Agreement cannot be cured without the Lessee Mortgagee obtaining possession of all or part of the Lessee's Property, then any such default shall be deemed remedied if a Lessee Mortgagee: (i) within sixty (60) days after receiving notice from Landlord acquires possession of all or part of the Lessee's Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Lessee's Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Lessee Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

(d) **Lessee Mortgagee Liability.** Any Lessee Mortgagee whose interest in the Lessee's Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Lessee Mortgagee succeeds to absolute title to the Lessee's Property and the rights of Lessee under this Agreement. An Lessee Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

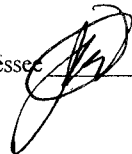
(e) **Certificates.** Landlord shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non disturbance agreements as Lessee or any Mortgagee may reasonably request from time to time. Landlord and Lessee shall negotiate in good faith any amendment to this Agreement from time to time to include any provision that may be reasonably requested by Lessee or any Lessee Mortgagee to implement the provisions contained in this Agreement or to preserve an Lessee Mortgagee's security interest.

Handwritten initials for Landlord and Lessee. The Landlord initials are a stylized 'L' and 'D'. The Lessee initials are a stylized 'L' and 'S'.

(f) **Lessee Mortgagee's Right to Enforce Mortgage and Assign.** Each Lessee Mortgagee shall have the right, in its sole discretion: (i) to assign its Lessee Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Lessee's Property by any lawful means; (iii) to take possession of and operate all or any portion of the Lessee's Property and to perform all obligations to be performed by Lessee under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Lessee's Property by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer all or any portion of the Lessee rights under this Agreement to a third party. Any Lessee Mortgagee or other party who acquires Lessee's interest in all or a portion of the Lessee's Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Agreement.

(g) **New Agreement.** (1) If the Lessee's Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Lessee or any Lessee Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Landlord to cure any material defaults under this Agreement, and for the payment of all Annual Rent or other charges due and payable by Lessee as of the date of such event, then Landlord shall execute and deliver to Lessee or such Lessee Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Lease Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Lessee Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Lessee's Property in which Lessee or such other Lessee Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. (2) If more than one Lessee Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Lessee Mortgagee requesting such New Agreement whose Lessee Mortgage is prior in time, and the written request of any other Lessee Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Paragraph 24 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Paragraph 24 were a separate and independent contract made by Landlord, Lessee and each Lessee Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Lessee Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Lessee's Property without hindrance by Landlord or any person claiming by, through or under Landlord; provided that all of the conditions for the New Agreement as set forth above are complied with.

(h) **Lessee Mortgagee's Consent to Amendment, Termination or Surrender.** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Lessee Mortgage remains outstanding, this Agreement shall not be modified or amended, and Landlord shall not accept a surrender, cancellation or release of all or any part of the Lessee's Property from Lessee, prior to expiration of the Lease Term of this Agreement, without the prior written consent of the Lessee Mortgagee holding such Lessee Mortgage. This provision



is for the express benefit of and shall be enforceable by each Lessee Mortgagee as if it were a party named in this Agreement.

25. Further Assurances

(a) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Paragraph 25. Lessee shall be responsible for reasonable costs that Landlord incurs as a result of Landlord's obligations under this Paragraph 25(a).

(b) From time to time, upon written request by Lessee (or its lenders), Landlord shall provide within seven (7) days thereafter (i) a lien waiver from any party purporting to have a lien, security interest or other encumbrance on the Site as a result of a contractual arrangement with Landlord, confirming that it has no interest in the Generating Facility, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, of Lessee's compliance with the terms of this Agreement or detailing any known issues of noncompliance.

(c) In the event Lessee or any Affiliate of Lessee requests from Landlord during the Option Period or the Lease Term grant of an easement for grid interconnection purposes on the Site (that may be separate from the Lease) or on any other property owned by Landlord neighboring the Site, Landlord shall grant such easement to the requesting party upon terms and conditions reasonably acceptable to Landlord and Lessee and at Lessee's sole cost and expense. Landlord shall use reasonable commercial efforts to support Lessee or its Affiliates in conjunction with any grid interconnection sought by Lessee or Lessee's Affiliates, and Landlord shall, at Lessee's sole cost and expense, execute such additional documents, instruments and assurances and take such additional actions as Lessee or its Affiliate deems reasonably necessary or desirable with respect to such grid interconnection.

26. Recording.

(a) **Memorandum of Agreement.** Landlord agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which shall be recorded with the appropriate recording officer. The date set forth in the Memorandum of this Agreement is for recording purposes only. Upon termination of this Agreement for any reason, if Lessee has no further rights pursuant to this Agreement then Lessee shall promptly record with the Stanislaus County Recorder's Office a "quitclaim" acknowledging that the Memorandum is terminated and that Lessee has no further interest of any kind in and to the Site. A copy of the recorded quitclaim shall be provided to Landlord within ten (10) Business Days of termination of this Agreement. If Lessee fails to provide such copy within the time specified, Landlord may request in writing that Lessee provide same. If Lessee fails to do so within ten (10) Business Days of receipt of such request then Lessee hereby grants Landlord an irrevocable power of attorney, coupled with an interest, for the sole purpose of executing and recording such documentation as Landlord deems appropriate for extinguishing all rights of Lessee in and to the Site. Landlord shall provide Lessee with a copy of any documents filed or recorded pursuant to said power of attorney.

(b) **Memoranda for Leased Site Option.** If requested by Lessee, Landlord agrees to execute a Memorandum of Lease for each Leased Site Portion, in form and substance satisfactory to the Parties, which shall be recorded with the appropriate County Recorder's Officer.

(c) **Ancillary Documentation.** Landlord agrees to Lessee's making of any filings against the Site Lessee deems appropriate to preserve Lessee's rights in the Site and Generating Facility. Landlord shall have the right to approve, not to be unreasonably withheld, any documentation which may create a cloud on Landlord's title to the Site prior to Lessee's filing thereof.

27. **Default.**

(a) **Lessee Payment Default.** In the event: (i) Lessee makes any Lease Option Payment at least thirty (30) days after the due date for such Lease Option Payment as set forth Paragraph 2(p) above (a "**Delinquent Option Payment**"), or (ii) Lessee makes any Annual Rent payment ten (10) Business Days after the due date for such Annual Rent payment set forth in Paragraph 5(b) above (the "**Delinquent Annual Rent**"), then Lessee shall pay to Landlord a late charge of Two Thousand Dollars \$2,000 as liquidated damages, in lieu of actual damages, for, inter alia, processing, accounting and collection expenses (the "**Late Charge**"). As a separate amount not a part of the Late Charge, Lessee shall pay interest on the amount of the Delinquent Option Payment or the Delinquent Annual Rent due to Landlord at the monthly rate of eight-tenths of a percent (8/10ths of 1%) compounded interest per month calculated on the amount of the relevant Delinquent Option Payment or the Delinquent Annual Rent due from the date such payment should have been made until the date paid in full, plus accrued interest. In the event Lessee is at least ninety (90) days late with payment of the relevant Lease Option Payment or Annual Rent, then such non-payment by Lessee shall constitute a default under the terms of this Agreement ("**Lessee Payment Default**") and Landlord shall send a default notice (the "**Payment Default Notice**") to Lessee with a thirty (30) day curing period upon receipt of the Payment Default Notice by Lessee. If Lessee fails to cure the Lessee Payment Default prior to the end of the thirty (30) day cure period, Landlord shall have the right to terminate this Agreement with such termination becoming effective on the tenth (10th) Business Day following Landlord's notice of termination provided to Lessee. Landlord's right to terminate this Agreement pursuant to this Paragraph 27(a) is subject to and conditioned upon Landlord giving any Lessee Mortgagee written notice and opportunity to cure the Lessee Payment Default as provided in Paragraph 24. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (A) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (B) the removal of the Improvements by Lessee; and (C) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination.

(b) **Other Lessee Default.** Lessee shall be in default of this Agreement if it shall fail to comply with any material terms of this Agreement, other than a Lessee Payment Default as set forth in Paragraph 27(a), and shall not cure such default within thirty (30) days after receiving notice thereof from Landlord (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Lessee fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to

completion) ("**Other Lessee Default**"). The breach by Lessee of any provision hereof may only result in a cause of action by Landlord under applicable law and, other than as set forth in this Paragraph 27, Landlord hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Lease Term. In the event of any such breach by Lessee, Landlord shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Lessee, and any Lessee Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Lessee does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Lessee Mortgagee or its designee shall have the absolute right, but not the obligation, to perform the duties of Lessee hereunder for the purposes of curing such breach. Landlord authorizes the Lessee Mortgagee or its designee (or its employees, agents, representatives or contractors) to enter upon the Landlord's Property to complete such performance hereunder. Landlord may cure any default by Lessee after Lessee's cure period has expired. If Landlord at any time by reason of Lessee's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Lessee to Landlord, together with interest on such sum calculated at the Default Rate.

(c) **Landlord's Right to Terminate.** Landlord has the right to terminate this agreement in the event of the following events of default:



(i) Persistent and repeated violation of the conditions of approval, permits, or disregard of the laws or regulations of any public authority having jurisdiction over the Lessee's use of any Leased Site Portion;

(ii) Lessee, or Lessee's successors and assigns, being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature, or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for this Agreement or any Leased Site Portion;

(iii) A bankruptcy, winding up, reorganization, insolvency arrangement, or similar proceeding instituted by or against the Lessee under the laws of any jurisdiction, which proceeding has not been stayed or dismissed within thirty (30) days or any action or answer by the Lessee approving of, consenting to, or acquiescing in any such proceeding; and

(iv) Lessee's cessation of use or occupation of all Leased Site Portions for a period of 12 consecutive months.

(d) **Landlord Default.** Landlord shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Lessee (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Landlord fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Landlord Default**"). Upon the occurrence of a Landlord Default, Lessee shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action

or remedies that may be available to Lessee at law or in equity, including but not limited to all loss or damage which Lessee may suffer by reason of a termination of this Agreement.

28. Dispute Resolution and Arbitration

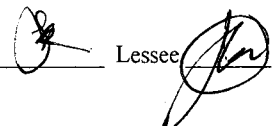
(a) The Parties, through their respective Chairman, CEO, President or other authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If, after such negotiation in accordance with Paragraph 27(a) above, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Chairman, CEO, President or other authorized representative of each Party shall meet for at least three (3) hours or for a time otherwise agreed to between the parties with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the mediation services of JAMS to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Paragraphs 27(a) or 27(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) All mediations pursuant to Paragraph 27(b) shall be held at a location to be agreed to between the parties and, in absence of any agreement, in San Francisco, California. Any legal action or proceeding brought by either of the Parties against the other Party with respect to this Agreement or the transactions in connection with or relating hereto, may be brought in the courts of the State of California in Stanislaus County and, by execution and delivery of this Agreement, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

29. Amendments. This Agreement may be amended only in writing signed by Lessee and Landlord or their respective successors in interest; provided, however, if Landlord has been notified that Lessee has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well. Only those amendments to this Agreement extending the Option Period, extending the Lease Term, and reducing Annual Rent shall require prior written approval by the Stanislaus County Board of Supervisors to be valid and enforceable. Amendments to this Agreement not requiring prior written approval by the Stanislaus County Board of Supervisors in accordance with the immediately preceding sentence shall be valid and enforceable if in written form and signed by Lessee and Landlord (with written consent of Lender, if required under this Paragraph 28).



30. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this Paragraph 29 by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. A Party may change its address by providing notice of the same in accordance with the provisions of this Paragraph 29.

If to Landlord:

Director of Environmental Resources
3800 Cornucopia Way, Suite C
Modesto, California 95358
Phone: 209-525-6700
Fax: 209-525-6774

With a copy to:

Chief Executive Officer
1010 10th Street, Suite 6800
Modesto, California 95354
Phone: (209) 525-6333
Fax: (209) 544-6226

If to Lessee:

Golden Hills Solar, LLC
c.o: Michael S. Warda, Esq.
2350 W. Monte Vista Ave
Turlock, California 95382

31. Entire Agreement; Amendments. This Agreement (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, in order to

be effective any amendment, modification or change to this Agreement must be in writing and executed by both Parties.

32. Recitals. The Recitals set forth herein above are hereby incorporated in and made a part of this Agreement by this reference.

33. Survival. Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

34. Severability. If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Agreement and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force and effect.

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

36. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the state in which the Site is located.

37. Brokerage Commissions. Each Party warrants to the other that no person or entity has a right to claim a real estate commission, finder's fee or any other form of compensation with respect to the transaction contemplated by this Agreement (collectively, "*Real Estate Compensation*"). Each Party hereby agrees to indemnify, defend and hold harmless the other Party from and against claims for Real Estate Compensation asserted by any third party as a result of actions by the indemnifying Party claimed to give rise to brokerage commissions payable as a result of the execution of this Agreement, which indemnification shall survive the expiration or earlier termination of this Agreement.

38. No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to such Party's other remedies under this Agreement or available at law or in equity.

39. No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

40. **Relationships of Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

41. **No Third Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Lessee's Financing Parties to the extent expressly provided herein.

42. **Attorneys' Fees; Costs.** In the event of any action, claim, suit or proceeding between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action, claim, suit or proceeding, in addition to any other relief granted or awarded. Each Party will bear its own costs and expenses relating to negotiating this Agreement and any additional documents relating hereto or thereto.

43. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

44. **General Interpretation.** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.


[Signature page to follow]




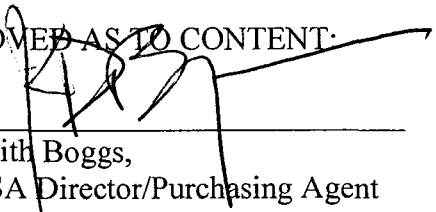
IN WITNESS WHEREOF, the parties have executed this Solar Generating Facility Land Option and Lease Agreement, affecting the Property with assessor parcel numbers 025-012-031, 025-012-033, 025-012-016, and 025-012-017, on the day and year first above written.

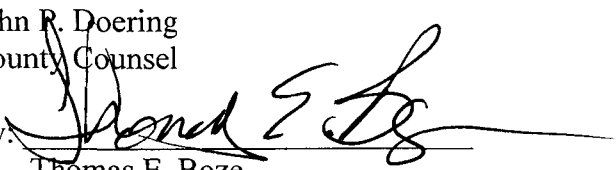
COUNTY OF STANISLAUS

GOLDEN HILLS SOLAR, LLC, a California limited liability company ^{1,2}

By: 
Stan Risen,
Chief Executive Officer

By: 
Print: JAMES K. BRENDA
Its: President, JKB Development, Inc.
member - manager
Date: 5/10/17

APPROVED AS TO CONTENT:
By: 
Keith Boggs,
GSA Director/Purchasing Agent

APPROVED AS TO FORM:
John R. Doering
County Counsel
By: 
Thomas E. Boze,
Assistant County Counsel

¹ Lessee shall attach a copy the document authorizing the individual or corporate partner to execute this Agreement on its behalf.

² Lessee's signatures must be properly notarized.

ACKNOWLEDGMENT

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 Stanislaus)

On May 10, 2017 before me, Michelle Lane Copeland, Notary Public,
(insert name and title of the officer)

personally appeared James K. Brenda
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~(s) 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 Michelle Lane Copeland (Seal)

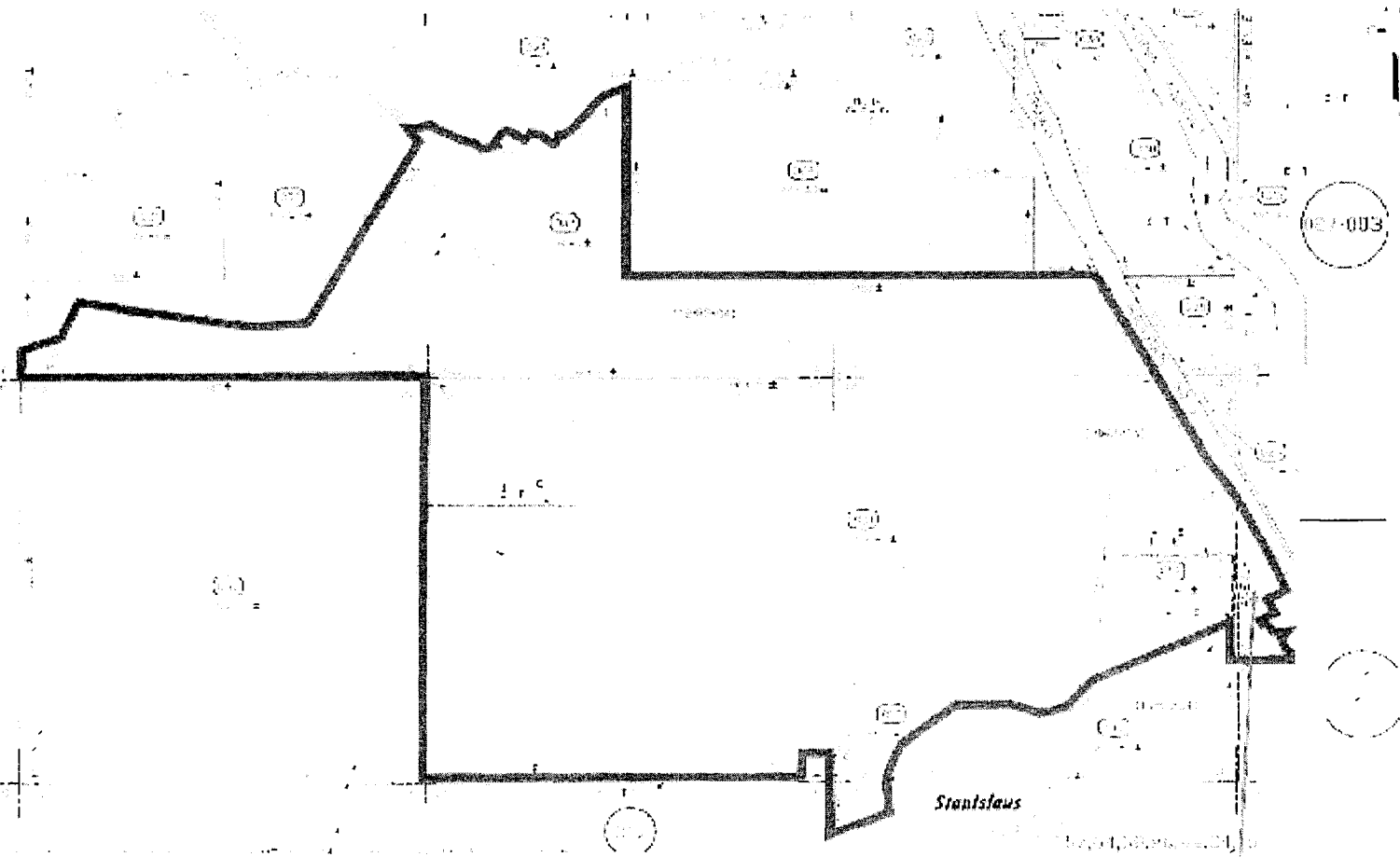


EXHIBIT A

Stanislaus County Assessor Parcel Map

1. APN: 025-012-031 – comprising approximately 1,001 acres.
2. 025-012-033 – comprising approximately 530 acres.
3. 025-012-017 – comprising approximately 89 acres.
4. 025-012-016 – comprising approximately 55 acres.
5. 027-033-012 (portion) – comprising approximately 16 acres.



025-012-033/529.6, 025-012-031/1001.02, 025-012-016/55.3, 025-012-017/89.44, 027-033-012 /16.12 (Pop.)

IS Ranch Lease Grand Total – 1691.48 acres

Initials: Landlord  Lessee 

EXHIBIT A-1

Proposed Location and Acreage of Site





Initials: Landlord  Lessee 

EXHIBIT B

Schedule of Property Liens

None

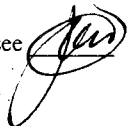


EXHIBIT C

Form Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "*Agreement*") is dated as of [DATE], and is by and between [ASSIGNOR], a [STATE] limited liability company ("*Assignor*"), and [ASSIGNEE], a [STATE] limited liability company ("*Assignee*"). Capitalized terms used herein and not defined shall have the same meanings when used herein as in the Purchase Agreement (defined below) between the Assignor and Assignee.

RECITALS

WHEREAS, Assignor is the Lessee and Stanislaus County is the Landlord pursuant to the Amended and Restated Solar Generating Facility Land Option and Lease Agreement, dated as of [DATE] ("**Lease**");

WHEREAS, Assignor and Assignee entered into a Purchase and Sale Agreement, dated as of [DATE] ("*Purchase Agreement*"), and Assignor has agreed to sell, and the Assignee has agreed to purchase, all of Assignor's rights, duties and obligations under the Lease; and

WHEREAS, Assignor and Assignee desire to enter into this Agreement to effect the assignment and assumption.

AGREEMENT

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

1. Assignor hereby assigns, transfers, sells, conveys, releases, quit claims and delivers to Assignee all of Assignor's right, title and interest in and to the Lease and Assignee hereby accepts such assignment, transfer, sale, conveyance and delivery of all of Assignor's right, title and interest in and to the Lease.

2. Assignee hereby assumes, and agrees to pay and perform or discharge when due, the obligations and liabilities relating to the Lease that arise or accrue from and after the date hereof.

3. Assignor does hereby agree, from time to time as and when reasonably requested by Assignee, to execute and deliver (or cause to be executed and delivered) such documents or instruments and to take (or cause to be taken) such further or other actions, as may be reasonably necessary to carry out the purposes of this Agreement.

4. This Agreement shall be governed by and construed in accordance with the Laws of the State of [STATE] without regard to its principles of conflict of laws.

5. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be duly executed by their respective representatives thereunto duly authorized, all as of the day and year first above written.

ASSIGNOR

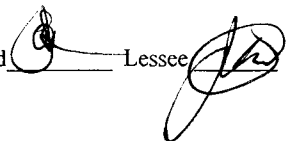
[_____] ,
a [STATE] limited liability company

By _____
Name:
Title:

ASSIGNEE

[_____] ,
a [STATE] limited liability company

By _____
Name:
Title:

Handwritten initials for Landlord and Lessee. The Landlord's initials are a stylized 'L' and 'L'. The Lessee's initials are a stylized 'L' and 'L'.



AMENDEND & RESTATED SOLAR LAND OPTION AND LEASE AGREEMENT Fink Road Property

**Stanislaus County Board of Supervisors
May 16, 2017**



BACKGROUND

- 1,678 acres of County owned property adjacent to Fink Road Landfill
- Property is set aside for future landfill expansion and/or environmental mitigation area
- Update to 100 year Landfill Study
 - No conflict with future mitigation need

BACKGROUND

- RFQ process resulted in exclusive right to negotiate agreement with JKB Development/Energy
- Land Option and Lease Agreement with Golden Hills Solar, LLC
 - 70MW Solar Energy Project;
 - 25 year Lease term, plus two optional 1-year terms;
 - Total estimated revenue is \$18.5 million

AMENDMENT

- 225MW
- Option term of 60 months total \$500,000
- 25 year Lease term, plus two optional 5-year terms
- Total estimated revenue is \$30.7 million
- Maintain property for potential use as mitigation lands for potential effects of any future expansion of the Fink Road Landfill
- Responsible to restore the site back to its original use, secured by a bond

BENEFITS OF AGREEMENT



This proposal is a revenue generator that will provide funding for future landfill expansion needs.

The Solar project encourages the development of a clean energy generation source within Stanislaus County.

Entire project is off the valley floor and not on prime Ag land.

RECOMMENDATIONS

1. Approve the Amended and Restated Solar Generating Land Option and Lease Agreement with Golden Hills Solar, LLC to develop a solar generating facility on county-owned land adjacent to the Fink Road Landfill.
2. Authorize the Chief Executive Officer to sign the Amended and Restated Solar Generating Land Option and Lease Agreement and to execute and deliver any and all documents that he deems necessary for the purposes of the project.

QUESTIONS

