

**POWER PURCHASE AGREEMENT**

Dated as of \_\_\_\_\_, 20\_\_

by and between

Napa Sanitation District Solar, LLC,  
as Provider

and

Napa Sanitation District  
as Customer

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## **Exhibits, Schedules**

- Exhibit A - Standard System Design Package
- Exhibit B - Form of Lender/Lessor Acknowledgment
- Schedule A - Description of Site
- Schedule B - Description of System
- Schedule C - Pricing
- Schedule D - Termination Values

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), dated as of \_\_\_\_\_, 2015 (the "Effective Date"), is by and between Napa Sanitation District Solar, LLC, a limited liability company formed under the laws of the State of Delaware (with SunPower Corporation, Systems as the sole member, "Provider"), and Napa Sanitation District, a county sanitation district formed under the laws of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, the Solar Services (as hereinafter defined), consisting of the delivery of electrical energy (the "Energy") generated by the System and other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" shall have the meaning set forth in the preamble.

"Annual Rate Escalator" shall mean the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the recitals.

“Environmental Attributes” includes, without limitation, Tradable Renewable Certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term 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) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future (excluding Environmental Attributes to which the Customer is entitled under this Agreement): (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s solar program or initiative, incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

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

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“Lease” shall mean the Site Lease Agreement in respect of the Site entered into by Provider and Customer as of the date hereof.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)). For purposes of access rights and other rights necessary for Provider to perform its obligations and responsibilities hereunder, the term “Provider” shall include Provider’s authorized agents, contractors and subcontractors.

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar PV systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” shall have the meaning set forth in the first recital.

“Solar Services” shall mean all services provided to Customer by Provider hereunder, including the provision of Energy and Environmental Attributes.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date on Schedule D to this Agreement, under column A or B, as applicable.



“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services

Customer engages Provider to provide the Solar Services to Customer, and Provider agrees to provide the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of the Lease. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder.

3. Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement and the Lease. Customer shall have the right to review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed on or near Customer’s buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the Lease, Provider shall perform installation work at the Site according to the Site-access limitations or restrictions contained in the Lease and Exhibit A, if any, and in a manner that minimizes inconvenience to and interference with Customer’s and Customer’s invitees’ and Customers’ use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 Standard System Design Package. Exhibit A sets forth the standard assumptions made by the Provider regarding the Site conditions, electrical conditions and System attributes (the “Standards”). Schedule B sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and the applicable Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2. If Customer chooses none of these options, Provider will have the right to terminate the Agreement per Section 3.1 above and Customer will be deemed to have waived the right to cure per Section 3.1 above.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the Lease or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities shall be subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;

- (a) Provider and Customer shall have executed a Lease for the Site and, if Customer's interest is a leasehold interest, the consent of the Customer's landlord for the Site shall have been obtained in accordance with the Lease;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement; and

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before December 15<sup>th</sup>, 2015, Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have the primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to assist Provider in

obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

#### 3.4 Energy Delivery.

The date on which the delivery of Energy commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer that the System is substantially complete and available for commercial operation, (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect, and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date resulting from a delay of the execution of an interconnection agreement.

#### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie (the "Interconnection Point") and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to Energy will transfer from Provider to Customer at the Interconnection Point.

#### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the System provided by Provider as of the Effective Date and set forth in Schedule D in the Appendix relevant to the System are an estimate and are subject to change by Provider pending final review by Provider's lenders of this

Agreement and the credit worthiness of the Customer. Provider shall use its commercially reasonable efforts to submit to its lenders within five (5) business days from the Effective Date, all documentation required by such lender to process the loan in connection with the System. Within ninety (90) days from the date of such submittal, Provider will notify Customer whether an amendment to the Termination Values set forth herein will be required, and if yes, shall provide Customer with written notice thereof, setting forth in detail the new Termination Values required by Provider. If, after the expiration of such ninety (90) day period, Provider does not notify Customer that new Termination Values shall be required, the Termination Values set forth herein shall be deemed accepted by both Parties. If Provider timely provides new Termination Values, then, upon receipt of the new Termination Values by Customer, Customer shall, within fourteen (14) business days from receipt of such new Termination Values, either accept or reject in writing such new Termination Values. If Customer fails to timely reject such new Termination Values in writing, or if Customer accepts such new Termination Values, this Agreement shall be deemed amended to incorporate such new Termination Values. If Customer timely rejects such new Termination Values, Provider may, within two (2) business days from receipt of Customer's rejection, propose to (i) proceed with the Termination Values as set forth herein; or (ii) propose new Termination Values to Customer, in which case the procedure set forth above shall be repeated one time only. If the Parties are unable to reach agreement with respect to the Termination Values, either Party shall have the right to terminate this Agreement, in which case neither Party shall be deemed in default hereunder and neither Party shall have any further liability to the other Party in connection herewith. Customer agrees to confirm final Termination Values in such certificates or acknowledgments to be delivered by Customer for the benefit of the Lender as provided in Section 14.17.

#### 4. Operation and Maintenance of System.

##### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the "O&M Work"). Provider shall maintain during the Term of this Agreement the capability to provide such O&M Work, either directly or indirectly (under a contract with SunPower Corporation, Systems or with another affiliate so long as such affiliate subcontracts the performance of the O&M Work to SunPower Corporation, Systems), or a third-party service provider capable of providing comparable services. Customer, as owner or lessor of the Site, will be given reasonable opportunity to approve the third-party service provider. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering Energy in accordance with the specifications set forth in Schedule B. Provider shall have the obligation to use commercially reasonable efforts to enforce the terms of any any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to any malfunctioning System and restore the supply of Energy as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Terry Oswald, Vice President of Operations and Maintenance  
SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804  
(510) 540-0550

If to Customer:

Mark Egan, Maintenance and Operations Supervisor  
Napa Sanitation District  
1515 Soscol Ferry Road  
Napa, CA 94558  
(707) 258-6000  
(707) 312-1664

4.3 Metering.

4.3.1 Maintenance and Testing. Maintenance and Testing. Provider shall install and maintain a utility-grade kilowatt-hour ("kWh") meter at the Site for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis, as well as a meter to be installed by AlsoEnergy at the Site (each a "Meter", and collectively the "Meters"). Upon Customer's written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meters, as well as all metering

data and energy production calculations. Provider shall test the Meters in compliance with manufacturer's recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer's sole cost; however, if an error or inaccuracy is discovered, and an Adjustment (as defined in Section 4.3.3 below) is required, the cost of such audit shall be borne by Provider. Customer shall have a right of access to all Meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meters pursuant to Section 4.3.1 or Section 4.3.2 indicates that any Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace such Meter. If applicable, Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date such Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Unless and until Customer elects to purchase the System pursuant to Section 10.2, Provider, or Provider's permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider's assigns. The System shall remain the personal property of Provider or Provider's assigns and shall not attach to or be deemed a part of, or fixture to, the Site. The System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC financing statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted to cause the System to be offline for forty-eight (48) daylight hours, in aggregate, per calendar year (the "Scheduled Outages") during the Term, during which times Customer shall not be obligated to accept, and if not accepted, pay for Energy; provided, however, that Customer shall have notified Provider in writing of any Scheduled Outages at least forty-eight (48)

hours in advance. In the event that Scheduled Outages at the Site exceed forty-eight (48) daylight hours, in aggregate, per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3.

4.6 Compliance with Utility Specifications.

Provider shall ensure that all Energy generated by the System conforms to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

5. Purchase of Solar Services.

5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System together with any other services associated with solar energy production that Provider may provide to Customer (e.g. the Environmental Attributes). The payment for Solar Services is calculated to include all of the above services in the price per kWh of Energy provided to the Site through the System. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are purchased and owned by Customer or its assignee. The price for the purchase of Energy includes the purchase of Environmental Attributes. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. Provider shall be solely responsible for notifying Customer of any

action or omission that could impair such value and for consulting with Customer as necessary to prevent impairment of the value of Environmental Attributes.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Attribute.

5.2.3 To avoid any conflicts with fair trade rules regarding claims of solar, during the first six (6) years of the Term, Customer shall submit to Provider for approval any press releases regarding Customer's use of solar and shall not submit for publication any such releases without the written approval of Provider, which approval shall not be unreasonably withheld or delayed. In lieu of the preceding, Customer and Provider may by mutual written agreement set forth in advance specific statements that may be used by Customer in any press releases that address Customer's use of solar provided pursuant to this Agreement.

5.2.4 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Financial Incentives. Customer shall be solely responsible for notifying Provider of any action or omission that could impair such value and for consulting with Provider as necessary to prevent impairment of the value of Environmental Financial Incentives.

5.2.5 Provider or its assignee will at all times retain the Environmental Financial Incentives (including all tax credits and related tax benefits and depreciation) associated with the System.

## 6. Price and Payment.

### 6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the applicable period, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant



Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

## 6.2 Taxes.

Customer Taxes. Provider shall invoice Customer for, and Customer shall pay (and shall indemnify and hold Provider harmless on an after-tax basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes (“Transfer Taxes”), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider’s failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed by any taxing authority on the System.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider’s use of the portion of the Site on which the System is installed, to the extent described in the Lease; (ii) the System or Provider’s ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

## 6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate, which payment shall be made by check to:

Napa Sanitation District Solar, LLC  
c/o SunPower Corporation, Systems  
1414 Harbour Way South

Richmond, CA 94804

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's lender, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's lender or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days after receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days after Provider notifies Customer that Provider disagrees with such allegation for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be submitted to arbitration administered by the American Arbitration Association in accordance with its then-existing Commercial Arbitration Rules. The arbitration shall take place in Alameda County, California before a single arbitrator selected in accordance with the Commercial Arbitration Rules. The decision of the arbitrator in the matter shall be final and binding upon the Parties and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The Parties agree that the arbitrator shall have the power to award damages, injunctive relief and reasonable attorneys' fees and expenses to either Party in such arbitration; provided that this arbitration provision does not prevent either Party from seeking interim injunctive relief from a court in order to preserve the status quo.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

As a material inducement to Customer's execution and delivery of this Agreement, Provider covenants and agrees to the following:

7.1.1 Permits and Approvals. While providing Solar Services, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in providing the Solar Services and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

As a material inducement to Provider's execution of this Agreement, Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to the System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.1.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall not cause the System to be overshadowed or otherwise block the System's access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. As necessary and permitted by Applicable Law, Customer will use best efforts to secure a solar easement for the Site (or assist Provider's efforts to secure such solar easement) to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider's Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider's obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Customer or its assignee; and

such policies shall be on terms that are reasonably satisfactory to the Customer or its assignee. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Insurance.

It is understood and agreed that Provider will also provide and maintain "all-risk" property insurance covering the System during all periods (construction and operation) when Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Customer or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Customer or its assignee. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage. Customer shall be given at least thirty (30) days' prior notice in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.3 Waiver of Claims.

Provider shall not be liable for any damage to the Site, or any equipment or personal property located thereon that results from perils that would be insured against in a so called "all-risk property damage" insurance policy, unless such damage is caused by Provider's gross negligence or willful misconduct.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event has interfered with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. Notwithstanding anything in this Section 9 to the contrary, no payment obligation of Customer under this Agreement may be excused or delayed as the result of

a Force Majeure Event. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date (the “Expiration Date”) that is twenty-five (25) years after the Commercial Operation Date (the “Term”), unless and until terminated earlier pursuant to Sections 3.1, 3.3, 9, 10.3.3, 10.6 or 12 (the date of any such termination, the “Termination Date”).

10.2 [RESERVED]

10.3 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.3.1 Substitute Site. So long as such event does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax or economic effect, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same electric utility district (or otherwise subject to the same interconnection or operation-related requirements), subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, and Environmental Financial Incentives. If such alternate Site is available and is acceptable to Provider, the definition of Site set forth herein shall thereafter be deemed amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and lost revenue due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.3.2 “Move and Pay” Option. So long as such event does not impair or reduce any Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.3.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the applicable Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.3.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.3.2 with respect to the System, then Customer shall so

notify Provider, Provider shall remove the System (at Customer's sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.3 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.4 Customer Options Upon Expiration of Term.

10.4.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer shall have the option to renew the term of this Agreement with respect to the System for one (1) additional five (5)-year period at the Renewal Rate.

10.4.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.4.1, Customer shall have the option to purchase the System by paying Provider the Fair Market Value thereof no later than one-hundred and eighty (180) days prior to the relevant Expiration Date. The "Fair Market Value" of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer's notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer at Customer's sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives shall transfer to Customer as-is, where-is.

10.4.3 Removal of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.4.1, Customer does not exercise any of the options described in Sections 10.4.1 and 10.4.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. Such cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for previously existing support structures, electric/wiring components and ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.5 Customer Purchase Option Prior to Expiration Date.

On the 6th, and 12th anniversaries of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.4.2 at Customer's sole cost and expense), or the then-current Termination Value specified in Column B of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the purchase price as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.6 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.2.1., 10.7 or 12.1.1, Customer shall be required to pay to Provider the then- applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.7 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.7.1 at any time until construction of the System commences;

10.7.2 if the occurrence of a final order or judgement of a court or administrative agency having jurisdiction subjects the sales of Energy under this agreement to federal or state regulation of prices and/or service;

10.7.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.7.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.



In the event of a Provider termination under this Section 10.7, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date. Such cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for previously existing support structures, electric/wiring components and ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.2 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days; provided, finally, that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a

receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Lease Default. A material default by Customer under the Lease occurs, or, if the Customer is not the fee owner of the real property covered by the Lease, if the Customer ceases to have the right to occupy the applicable Site and to permit Provider to own and operate the applicable System thereon.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days;

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.2.3 Lease Default. A material default by Provider under the Lease occurs.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default as described in Section 11.2 above has occurred and is continuing, and if Provider fails to correct or cure the conditions causing such Provider Default within ten (10) days after Provider shall have received Customer's written notice of Customer's intent to terminate this Agreement as a result of such Provider Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten (10) day period.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider's sole liability to Customer in respect of such Provider Default shall be the payment of an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of the Agreement times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Except as provided in Sections 10.3.3 and 12.1.1, Customer shall have no right to terminate this Agreement and shall have no other remedies.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default as described in Section 11.1 has occurred and is continuing, and if Customer fails to correct or cure the conditions causing such Customer Default within ten (10) days after the date on which Provider gives Customer written notice of Provider's intent to terminate this Agreement as a result of such Customer Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten (10) day period and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

### 12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as

payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages. Provider's liability hereunder shall be in all respects limited to amounts paid to it hereunder during the most recent twenty-fourth (24)-month period.

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

13. Indemnification.

13.1 Indemnification by Provider.

Without limiting the provisions of Section 8, Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Provider or its agents or employees or others under Provider's control at the Site or (b) a Provider Default hereunder or a default by Provider under the Lease; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Sections 12.1.2 and 12.3 above.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the gross negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder or a default by Customer under the Lease; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the

Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement and/or the Lease, as applicable.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Napa Sanitation District Solar, LLC  
c/o SunPower Corporation  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: Project Administrator  
Phone: 510-540-0550  
Fax: 510-540-0552

If to Customer:

Napa Sanitation District  
1515 Soscol Ferry Road  
Napa, CA 94558  
Attention: Jeff Tucker  
Phone: (707) 258-6000  
Fax: (707) 258-6048

All notices, communications and waivers to Customer's lenders or other financiers under this Agreement shall be to the name and address specified in a notice from Customer to Provider. All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

#### 14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;

- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a County Sanitation District duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to

- (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No Governmental Approval (other than any Governmental Approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement (i) conflicts with, breaches or contravenes the provisions of State laws governing county sanitation districts , or any contractual obligation of Customer, or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

#### 14.3 Assignment.

Customer shall not be permitted to assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. Provider shall be permitted to assign this Agreement to an affiliate upon written notice thereof to Customer. Provider shall also be permitted to assign this Agreement upon written consent of Customer.

However, Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.



14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) and the Lease represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements. In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall govern and control.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law. Customer further agrees that final judgment against it in any action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the State of California by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that any amounts payable by one Party to the other as a result of the payor's default shall constitute liquidated damages

and not penalties. The Parties further acknowledge that in each case (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a "public utility" (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 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, affiliated company, 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.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of such information, (b) the giving of such certificates or acknowledgments (which may be in the form of the attached Exhibit B), and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Provider as a financing party may reasonably request).

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or the Lease.

14.19 Service Contract.

The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

15. Confidential Information.

Each Party (the "Receiving Party") shall not use for any purpose other than performing its obligations under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto, all information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, including the California Public Records Act, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by law, a court or other Governmental Authority to disclose confidential information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of

disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

Subject to the foregoing, during the first year of the Term and for one year following Customer's purchase of the System, if applicable, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement.

16. Estoppel.

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

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

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

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

Napa Sanitation District Solar, LLC

By: SunPower Corporation, Systems,  
Its member

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

CUSTOMER:

Napa Sanitation District

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Bakker  
District Legal Counsel

## EXHIBIT A

### STANDARD SYSTEM DESIGN PACKAGE

The following are the standard assumptions made by the Provider regarding the existing condition at the Site, including but not limited to ground conditions, electrical system including panels, inverter installation location, and security fencing.

- System Size: At least 1,044kWp per site
- System Type: SunPower Standard (0.45 Ground Coverage Ratio) Ground Tracker System
- System Components: Modules, mechanical attachment assemblies, DC wiring, DC-AC inverters, data acquisition system, and interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility lockable disconnect switches, NGO metering, conduit, and wiring. Metal materials are galvanized or non-corrosive; conduit is EMT with compression fittings for above-ground installations, and schedule 40 PVC for below-ground installations.
- System Description: Photovoltaic modules installed facing south, with DC cable runs from the array to the concrete, ground-mounted inverter equipment pad.
- Tie-In Location: Main electrical panel interconnect at 12kV with ample current capacity to accept the system.

Standard system assumes the following conditions, which Provider and Customer will verify:

#### Site Conditions

(a) Labor

##### *Overtime and special shift requirements*

Overtime and special shift requirements **are not** included, based on schedule submitted with this proposal, except as required to achieve electrical interconnections, so that shut downs do not affect general facility operations.

##### *Prevailing Wages*

Project is assumed to be subject to Prevailing Wage per industrial relations requirements of project location at Napa, California. Proposal assumes compliance with Division 2, part 7, chapter 1 (commencing with section 1720) of the California Labor Code, which requires payment of prevailing wages and regulates working hours. Certified payroll will be submitted using the Public Works Payroll Reporting Form or its equivalent.

##### *Labor Agreements*

Proposal assumes a Project Labor Agreement **is not** in place in this jurisdiction.

##### *Diversity Requirements*

Requirements and/or related due diligence and good faith efforts for small, small local,



diversified or minority contractors **are not** included in this proposal.

(b) Indirect Construction Costs

*Bonds*

One hundred percent Payment and one hundred percent performance bonds **are** included. Bid bond **is not** included in proposal.

*Insurance*

Insurance requirements in excess of Provider's standard limits and coverages are not included.

Provider shall procure and maintain the following insurances; installation or builders' risk insurance covering the System and all materials from the time delivered to the Site for their full replacement cost value on an all risk or special cause of loss form from the Commencement Date through the Commissioning Date.

Proposal assumes there no Owner Controlled Insurance Program (OCIP) in place for this project.

*Permits and Regulatory Fees*

An allowance for County of Napa building permits and approval requirements is included. All other permits/approvals are excluded including, but not limited to: conditional use permit, environmental control, storm water, soil erosion and sediment control, air quality, tree removal review and permitting, environmental impact report, state environmental regulatory agency and legislative act compliance, Army Corps of engineers, wetlands, water quality, archeological, endangered species, water rights, mineral rights, redevelopment, etc.

If additional work is required, permits/approvals in support of the installation of the solar electric system, such as conditional use permits, environmental impact reports, dust control permits, etc., any associated added costs are not included.

Provider includes durations for procuring permit and regulatory approvals in the Project Schedule as the basis of this proposal. See permitting durations assumed in the attached proposed master schedule.

Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will entitle Provider a time extension change order to the contract as a day for day extension to our plan for obtaining required permits and/or approvals, as defined above or in the proposal schedule.

CEQA allowance = \$55,726.00, timing to completion is scheduled for September 2, 2015. If the results cause modifications to proposed array layout we may need to adjust to align expectations, schedule and costs accordingly.

Title Report allowance = \$1000.00 – per RFP.

*Document Handling*

Additional design or construction administration work to change Provider design, construction administration, or record documentation standards to meet client's unique design or construction administration requirements are not included.

(c) System Design & Scope

*Array & DC Cable Run*

The arrays, equipment pads, and point of interconnection will be constructed to the design and specifications as shown in proposal level layouts in the drawing provided. Conductors will be copper per direction of RFP.

DC runs to be trenched or bored as necessary from array to inverter and equipment pad.

Design includes PVC conduit from underground transition to inverter/panel boards and EMT conduit with rain-tight compression fittings above inverters for any aboveground low voltage or AC circuits and PVC for all underground conduits.

DC array wiring to Inverters may be exposed on the underside of PV modules or neatly secured to PV modules and/or racking system. DC source circuits are USE-2 weather rated for exterior exposure.

String-level inverters & panel boards shall be mounted on the PV array support structure.

DC array grounding achieved by use of Provider proprietary grounding clip and/or rivet attachment.

Allowance = 25,000.00 for Also Energy per RFP is included.

*Equipment Location & Tie-In*

Electrical equipment such as switchgear and transformers (as required) will be installed on the ground with a standard Provider service concrete pad, or attached to building located as shown on the proposal level layout drawings.

Coordination of shutdown is required with owner; temporary power generators are excluded. Interconnection assumed to be performed on off hours with prior written approval from client.

Medium voltage transformers are required in order to step-up voltage to match point of interconnection voltage or transmit long distances, transformers shall be 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in this proposal.

Proposal assumes there is no additional customer-side protection or disconnects.

AC cable sizing is based on the assumption that the soil thermal resistivity (RHO) is less than or equal to 120°C-cm/W.

AC feeder length from panel board to equipment pad location and from equipment pad location to tie in is identified on proposal level array layout drawings. AC feeder lengths from inverter equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on proposal level single line drawing. Proposal assumes that AC conduits & feeders can cross the existing site utilities (overhead and underground) without easement encroachment issues. Should easement encroachment issues arise, Provider will work actively with Napa Sanitation District, the utility companies, and the Authorities Having Jurisdiction to resolve the issues, at Provider's cost.

*Shading*

Removal of trees or other obstructions to install the solar arrays and system components is

included in the proposal.

#### *Paint & Coatings*

For the Oasis DG Tracker -Mount PV system, the structures shall be galvanized light gauge steel. For all other system options, metal materials are either factory-finished or non-corrosive and will not need painting for weather protection.

#### *Fencing*

A 6-0' galvanized 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter of site and Inverter, Transformers, or Enclosed Circuit Breaker electrical equipment pad locations as well as the arrays themselves is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included.

#### *Utility Requirements*

Proposal assumes all utility-owned electrical equipment serving the sites electrical distribution system has adequate capacity to handle the photovoltaic system output. No utility required electrical equipment upgrade or replacement is included in this proposal, including design and coordination thereof.

Any costs associated with unforeseen utility interconnection approvals/requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

#### *Facility Equipment*

It is assumed that the system will interconnect with the facility at customer's existing panels and the panels rated as shown in the RFP with ample current capacity to accept the PV system.

The existing panels are assumed to have provisions to accept cable connections to an existing breaker supplied by Owner. Panel or bus bar reconfiguration and/or customer distribution equipment re-listing certification is not included.

Proposal excludes Circuit Breaker Coordination Study for this project.

Proposal excludes Short-Circuit Coordination Study for this project.

Solar system includes all standard interconnection related equipment on the customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, NGO metering, conduit, and wiring. Additional customer-side protection required by the utilities above that provided by the certified inverters is not included.

#### (d) Site & Construction Conditions

##### *Access*

Proposal assumes project will be constructed in a single phase delivery method.

Provider will be guaranteed site access to perform all work. All work to be performed during

regular business hours between 7:00 am and 5:00 pm.

Provider will have access to a staging area for delivery trucks and a crane required to lift materials to the roof, as applicable, during normal business hours.

Proposal assumes that no new permanent access or maintenance roads will need to be completed for the project. Existing roads will be sufficient for long-term operations & maintenance requirements.

Provider will have site access for construction activities and deliveries during all hours of the week.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work.

Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

The utility in charge will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet—i.e. badging, background checks, tool inventory checks, etc.—is not included.

Proposal assumes temporary fencing will not be required during construction, due to existing site security and the fact that permanent perimeter fence construction will begin immediately after the project has mobilized.

### *Use of Facilities*

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temp generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider's standard concrete mix design.

### *Special handling of site materials*

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

### *Site utilities and hazards*

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and right-of-ways at all project site locations.

### *Structural Foundations*

Foundation assumptions are as follows for system options:

- Oasis Ground Tracker .45 GCR-Mount PV System = **Driven piles (depth to-be-determined based upon final geotechnical report).**

If additional width, embed depth or spread footing is needed due to soil conditions, additional costs will be the responsibility of the client.

Proposal assumes that if ground water or dewatering, sub grade rocks, or other unforeseen underground structures are encountered and there is a need to slurry and re-drill or dewater site, then additional costs will be the responsibility of the client.

#### *Soil Conditions*

Existing site soil is assumed to have the characteristics described in the Geotechnical Study Report prepared by RGH Consultants for Project Number 6744.01.04.2 dated December 13<sup>th</sup>, 2013, as provided in the RFP. If the final Geotech report increases the depth of piers required then the cost will need to be adjusted accordingly.

#### *Drainage*

Special drainage requirements and/or drainage design and interconnection to customer's existing storm drain system or any other storm drain discharge system is excluded from this proposal.

#### *Security and Lighting*

New lighting circuit & fixture installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards.

Additional security systems or infrastructure **are not** included in this proposal.

#### *Special Conditions*

While special care will be taken to locate existing underground utilities (underground survey) and locate array structures with minimum conflicts. Relocation of existing underground utilities due to foundations is not included.

Architectural enhancements to the photovoltaic array structures and mounting systems are not included in this proposal.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

45 hours have been allowed for cogen / stationary storage system integration.

Provider can meet the schedule milestones requested in the RFP. However, if this is not possible, due to the RFP schedule changes, then the project schedule milestones should be adjusted accordingly.

#### *Weather conditions*

Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the client.

- (e) Commissioning, Monitoring, Operations & Maintenance

### *Commissioning*

Proposal assumes commissioning requirements for this project is only for the Photovoltaic portion of the project only. Proposal does not include other building system commissioning cost not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

### Monitoring

Third-party monitoring is included, per CSI requirements

Energy Management System Integration or similar control or SCADA system integrations to the new photovoltaic array(s) is excluded from this proposal. Agreement assumes use of a dedicated data line for communication with a third party monitoring company. All other communication and low voltage infrastructure is excluded from this proposal.

## EXHIBIT B

### FORM OF LENDER/LESSOR ACKNOWLEDGMENT

*[The Form Acknowledgment below contemplates a Sale-Leaseback of the Eligible Renewable Generating Facility between the Provider and Provider's Lender/Lessor and is subject to change based on requirements of the Lender/Lessor]*

#### ACKNOWLEDGMENT AND CONFIRMATION

This Acknowledgment and Confirmation, dated as of [DATE] (this "Acknowledgment"), is made by [NAME OF CUSTOMER / POWER PURCHASER], a [STATE] [TYPE OF ENTITY] (the "Customer"), with reference to (i) the [NAME OF THE POWER PURCHASE AGREEMENT] dated [as of] [DATE] (the "PPA") between the Customer and [NAME OF PROVIDER / PROJECT COMPANY], a Delaware limited liability company (the "Provider").

This Acknowledgment is provided pursuant to Section [ ] of the PPA to [NAME OF LENDER/LESSOR] (as collateral agent or lessor, the "Eligible Renewable Generating Facility Lessor"), which is providing financial accommodations to Provider. Capitalized terms not otherwise defined herein have the meaning in the PPA.

The solar photovoltaic Eligible Renewable Generating Facility (the "Eligible Renewable Generating Facility") to be installed, operated and maintained by Provider pursuant to the PPA is located at Customer's facility at \_\_\_\_\_ (the "Premises").

#### 1. Acknowledgment of Collateral Assignment.

- a) Customer acknowledges and consents to the collateral assignment by Provider to the Eligible Renewable Generating Facility Lessor, of Provider's right, title and interest in, to and under the PPA.
- b) Customer acknowledges that (i) it has been advised that (1) Provider intends to sell the Eligible Renewable Generating Facility to Eligible Renewable Generating Facility Lessor, (2) upon such sale, Eligible Renewable Generating Facility Lessor will be the owner of the Eligible Renewable Generating Facility, and (3) Eligible Renewable Generating Facility Lessor intends to lease the Eligible Renewable Generating Facility to the Provider pursuant to a lease (the "Eligible Renewable Generating Facility Lease"), upon which, the Provider will grant a first priority security interest in the Eligible Renewable Generating Facility to Eligible Renewable Generating Facility Lessor and (ii) Eligible Renewable Generating Facility Lessor has relied upon the characterization of the Eligible Renewable Generating Facility as personal property, as agreed in the PPA in accepting such security interest as collateral for its financing of the Eligible Renewable Generating Facility.
- c) Customer acknowledges that, during the continuance of an event of default by Provider under the Eligible Renewable Generating Facility Lease (as notified to Customer by Eligible Renewable Generating Facility Lessor) or upon the end of the Lease Term (as defined in the Eligible Renewable Generating Facility Lease), Eligible Renewable Generating Facility Lessor has the right to foreclose on and succeed to all of Provider's right, title and interest under the PPA, including the right to continue to perform in place of the Provider, the right to require Customer to continue to perform under such agreements, and the right to rely upon all representations, warranties, indemnities and agreements made by Customer under or pursuant to the Agreements.

- d) Until further written notice from the Eligible Renewable Generating Facility Lessor, Customer agrees to make all payments due Provider under the PPA to Eligible Renewable Generating Facility Lessor.

2. Eligible Renewable Generating Facility Lessor's Rights. Notwithstanding any contrary term of the PPA:

- a) Eligible Renewable Generating Facility Lessor, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the PPA in accordance with the terms of such agreements.
- b) The Eligible Renewable Generating Facility Lessor shall have the right, but not the obligation, to pay all sums due under the PPA and to perform any other act, duty or obligation required of the Provider thereunder or cause to be cured any default of Provider thereunder. If Eligible Renewable Generating Facility Lessor or Collateral Agent or their designees or assignees elect to perform Provider's obligations under the PPA or to enter into a new agreement as provided herein, Eligible Renewable Generating Facility Lessor, Collateral Agent and such designees and assignees shall not have personal liability to Customer for the performance of such obligations, and the sole recourse of Customer in seeking the enforcement of such obligations shall be to such parties' interest in the Eligible Renewable Generating Facility.
- c) If Customer becomes entitled to terminate the Agreement due to an uncured Event of Default by Provider, Customer shall not terminate any Agreement unless it has first given notice of such uncured Event of Default to Eligible Renewable Generating Facility Lessor and has given Eligible Renewable Generating Facility Lessor the same cure period afforded to Provider under the applicable Agreement, plus an additional thirty (30) days beyond Provider's cure period to cure such Event of Default; provided, however, that if Eligible Renewable Generating Facility Lessor requires possession of the Eligible Renewable Generating Facility in order to cure the Event of Default, and if Eligible Renewable Generating Facility Lessor diligently seeks possession, Eligible Renewable Generating Facility Lessor's additional 30-day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of Eligible Renewable Generating Facility Lessor.
- d) Within ninety (90) days of any rejection or other termination of either Agreement in connection with any bankruptcy or insolvency Event of Default of Provider, Eligible Renewable Generating Facility Lessor (or its successor) and Customer shall enter into a new power purchase agreement or lease, as applicable, on the same terms and conditions as such Agreement for the period that would have been remaining under such Agreement but for such termination.

3. Confirmation. Customer confirms the following matters for the benefit of the Eligible Renewable Generating Facility Lessor:

- a) To the Customer's knowledge, there exists no default and no event or condition that would, with the giving of notice or lapse of time, constitute a default, under the PPA or the Site Lease. [IF THERE ARE ANY EXCEPTIONS, PLEASE LIST HERE]
- b) Customer approves the Eligible Renewable Generating Facility as installed at the Premises.
- c) Provider or its designee (including Eligible Renewable Generating Facility Lessor) shall have the right to access the Eligible Renewable Generating Facility on the Premises in order to install, operate, maintain, and remove the Eligible Renewable Generating Facility.



- d) Customer is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the Eligible Renewable Generating Facility as an interest adverse to Eligible Renewable Generating Facility Lessor's security interest therein.
- e) Each of the PPA and the Site Lease is in full force and effect and has not been amended since the date of that agreement [IF THERE HAVE BEEN AMENDMENTS, PLEASE ADD:, except pursuant to the following written amendments: {LIST}], and there are no other agreements or representations of any kind between Customer and Provider as to the subject matter of the PPA or the Site Lease. Customer agrees that it will not amend, terminate, renew, extend or modify either Agreement without prior written consent from Eligible Renewable Generating Facility Lessor.
- f) Customer will use commercially reasonable efforts to place its successors, assigns, and lien holders on notice of the ownership of the Eligible Renewable Generating Facility by Provider or Eligible Renewable Generating Facility Lessor, the existence of the security interest, and the fact that the Eligible Renewable Generating Facility is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.
- h) [ADDITIONAL CONFIRMATIONS AS PROVIDED IN THE PPA AND AS REASONABLY REQUESTED BY LENDER/LESSOR/ELIGIBLE RENEWABLE GENERATING FACILITY LESSOR]

This Acknowledgment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Acknowledgment by facsimile or e-mail (including "pdf" format) or other electronic means shall be effective as delivery of an original executed counterpart of this Acknowledgment.

Customer hereby represents and warrants that it has the full power, authority and legal right to execute, deliver and perform its obligations under this Acknowledgment and under the Agreements. This Acknowledgment has been duly executed and delivered by Customer and constitutes the legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their respective terms

Eligible Renewable Generating Facility Lessor shall have the right to assign its interest in the Agreements to other persons and Eligible Renewable Generating Facility Lessor shall be an express third-party beneficiary of the rights described herein and in each Agreement.

<p>CUSTOMER:</p> <p>NAME OF CUSTOMER:</p> <p>By:</p> <p>Name:</p> <p>Title:</p>	<p>PROVIDER:</p> <p>NAME OF PROVIDER:</p> <p>By:</p> <p>Name:</p> <p>Title:</p>
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## Schedule A

### DESCRIPTION OF SITE

**Site Name:** Napa Sanitation District

**Site Address:** 1515 Soscol Ferry Rd., Napa, CA 94558

**Description of Building and Surrounding Area:** The solar system will be located on the land north of the Napa Sanitation District facilities, to the immediate north and south of Soscol Ferry Road as indicated in the attached array layout.

**Description of Electrical Facility:** 1,044 kWp ground-mounted single-axis tracking solar PV system

**Summary of Twelve Months of Utility Bills:** 5,326,513 kWh

**Site Exposure:** Exposure Type C

**Satellite Picture of Property:**





**Schedule B**

**DESCRIPTION OF SYSTEM**

**Specifications:**

Estimated Year 1 Production:	2,113,172 kWh
Deviations from the Standards in Exhibit A	None

**Schedule C**

**PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1041/kWh	25	0%

**Schedule D**

**TERMINATION VALUES**

The following Termination Values are based on the Standard System Design Package.

Applicable Date: Commercial Operation Date plus	Termination Values
0 Year	\$2,874,202
1 Year	\$2,690,294
2 Years	\$2,457,559
3 Years	\$2,206,043
4 Years	\$1,940,930
5 years	\$1,663,362
6 Years	\$1,406,690
7 Years	\$1,354,935
8 Years	\$1,301,031
9 years	\$1,244,843
10 Years	\$1,186,220
11 years	\$1,130,158
12 Years	\$1,071,813
13 Years	\$1,011,042
14 Years	\$947,692
15 Years	\$881,602
16 Years	\$812,592
17 Years	\$740,364
18 Years	\$664,521
19 Years	\$584,678
20 Years	\$500,351
21 Years	\$411,196
22 Years	\$316,986
23 Years	\$217,298
24 Years	\$111,756