Proposed Staff Recommendation Consent Calendar for February 23, 2017

ENGINEERING AND OPERATIONS COMMITTEE
9- 1. Amendment 2 to service contract with Nash Fabricators, Inc. for in-shop fabrication, repair, and machine shop services.
Authorize the General Manager to execute Amendment 2 to the services contract with Nash Fabricators, Inc. for $160,000 increasing the contract amount from $140,000 to $300,000.

9- 2. Solar Power and Services Agreement between the San Diego County Water Authority and Pristine Sun, LLC.
Authorize the General Manager to enter into a General Terms and Conditions Agreement with Solar Power for a Floating Photovoltaic Power System on Olivenhain Reservoir (“General Conditions Agreement”) for negotiation of a potential no-cost Solar Power and Services Agreement with Pristine Sun, Corporation.

ADMINISTRATION AND FINANCE COMMITTEE
Note and file monthly Treasurer’s Report.

9- 4. Approve the selection of firms to serve in the Water Authority’s pre-approved bond counsel pool.
Approve the formation and use of a pre-qualified bond counsel pool.

LEGISLATION AND PUBLIC OUTREACH COMMITTEE
Adopt federal legislative priorities for 2017.

IMPORTED WATER COMMITTEE
9- 6. Amend agreement for Consulting Services with Southwest Strategies.
Board Officers’ recommendation: Amend the agreement with Southwest Strategies for expanded and continued consulting public outreach services to the Water Authority by $476,505 through June 30, 2018, extending the term of the agreement by 12 months, and increasing total contract funding to an amount not to exceed $875,505.
February 21, 2017

Attention: Engineering and Operations Committee

General Terms and Conditions of Solar Power and Services Agreement between the San Diego County Water Authority and Pristine Sun, Corporation (Action)

Staff Recommendation:
Authorize the General Manager to enter into a General Terms and Conditions Agreement with Solar Power for a Floating Photovoltaic Power System on Olivenhain Reservoir (“General Conditions Agreement”) for negotiation of a potential no-cost Solar Power and Services Agreement with Pristine Sun, Corporation.

Fiscal Impact
There are no capital costs to the Water Authority for the signing of this General Conditions Agreement. The effect of what is being signed at this time is simply a commitment to move forward with negotiations towards a potential arrangement in which revenue to the Water Authority would be estimated to average $128,000 per year over the 25-year term of the agreement. If negotiations proceed, then the matter will be returned to the Board later for consideration and approval of any actual binding agreement.

Discussion
This Board Memo supersedes the previous Board Memo, dated February 15, 2017, regarding this proposed action. On February 22, 2016, a request for proposal was advertised, to provide planning, design, construction, permitting, and operations and maintenance services for an up to 6 megawatt floating photovoltaic power system on up to 20 acres of the Olivenhain Reservoir. A main point in the solicitation was requesting business models where the project could be implemented at little to no cost to the Water Authority. On March 14, 2016, the Water Authority received a proposal from Pristine Sun, LLC. A five-member selection panel evaluated Pristine Sun’s qualifications by reviewing the proposals, conducting two interviews, and verifying past client references. Based on Pristine Sun’s technical competence, applicable experience, past performance, and ability to accomplish the work, the panel reached consensus to potentially negotiate a no cost Solar Power and Services Agreement with Pristine Sun.

However, there has been no formal California Environmental Quality Act review by any public agency of this possible project. It may well be that such review by the lead agency and any responsible agencies will require changes, or even not proceeding with the project at all. Therefore, at this time only the General Conditions Agreement, which calls for further good faith negotiations, is being recommended for approval. Should the parties proceed and reach agreement on a binding contract, it would be for a potential public-private partnership where Pristine Sun will fund all project capital, operations, and maintenance costs, while the Water Authority will provide the installation site. Revenue from the sale of the renewable energy generated will be shared between the parties, with the Water Authority’s share at approximately $3.2 million over the 25-years. Per the terms listed in the General Conditions Agreement, the
Water Authority and Pristine Sun would equally share any intellectual property resulting from the project. Pristine Sun will be responsible for all environmental approvals, permitting, and permit compliance. The County of San Diego is expected to be the lead agency under CEQA for this project. Any final agreement and construction would proceed only after all environmental approvals and permits are obtained. The project, if it proceeds, could be expected to be commercially operational by the end of 2018.

Prepared by:  Kelly Rodgers, Energy Program Manager  
Reviewed by:  Sandra L. Kerl, Deputy General Manager  
Approved by:  Maureen A. Stapleton, General Manager  

Attachment
GENERAL TERMS AND CONDITIONS
OF SOLAR POWER AND SERVICES AGREEMENT
FOR FLOATING PHOTOVOLTAIC POWER SYSTEM ON OLIVENHAIN
RESERVOIR

SAN DIEGO COUNTY WATER AUTHORITY
AND
PRISTINE SUN CORPORATION
## Table of Contents

0.
Table of Contents .......................................................................................................................................... ii

0.
 ................................................................................................................................................................... ii

1. DEFINITIONS............................................................................................................................................. 2
  1.1 Definitions. .......................................................................................................................................... 2
  1.2 Interpretation...................................................................................................................................... 12

2. TERM AND TERMINATION. .................................................................................................................... 12
  2.1 Effective Date. ................................................................................................................................... 12
  2.2 Term. ................................................................................................................................................. 12
  2.3 Early Termination. ............................................................................................................................ 13
  2.4 Purchase Option ............................................................................................................................... 13
  2.5 Determination of Fair Market Value. ................................................................................................ 14
  2.6 Removal of System at Expiration/Termination. ................................................................................ 14
  2.7 Host Conditions of the Agreement Prior to Installation. ................................................................. 15
  2.8 Environmental Compliance. ........................................................................................................... 16

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM. .......................................................... 16
  3.1 Installation Work. .............................................................................................................................. 16
  3.2 Approvals; Permits. ........................................................................................................................... 17
  3.3 System Acceptance Testing. .............................................................................................................. 17
  3.4 Connection. ....................................................................................................................................... 17
  3.5 As-Built Drawings. ............................................................................................................................ 18
  3.6 Posting of System Development Security. ........................................................................................ 18
  3.7 Subcontracts. .................................................................................................................................... 18
  3.8 Certification of Commercial Operation Date. ................................................................................... 18
  3.9 Milestone Schedule .......................................................................................................................... 18
  3.10 Decommissioning and Other Costs. ............................................................................................... 20

4. SYSTEM OPERATIONS ............................................................................................................................. 20
  4.1 Provider as Owner and Operator ..................................................................................................... 20
  4.2 Metering ............................................................................................................................................ 20
  4.3 Additional Technologies on Premises .............................................................................................. 21
  4.4 Operations During Emergency Drawdown .................................................................................... 21
  4.5 Temporary Shutdowns, Relocation of System ................................................................................ 22
  4.6 CAISO Agreements; Interconnection Agreements; Scheduling. ................................................... 22

5. DELIVERY OF SOLAR SERVICES. ........................................................................................................ 22
19.5 Costs of Bonds or Letter of Credit ................................................................. 44
20. MISCELLANEOUS ............................................................................................ 44
   20.1 Integration; Exhibits .................................................................................. 44
   20.2 Amendments ............................................................................................ 45
   20.3 Cumulative Remedies .............................................................................. 45
   20.4 Disputes .................................................................................................... 45
   20.5 Limited Effect of Waiver ......................................................................... 45
   20.6 Survival ..................................................................................................... 45
   20.7 Governing Law; Waiver of Immunity ...................................................... 45
   20.8 Severability .............................................................................................. 45
   20.9 Relation of the Parties ............................................................................. 46
   20.10 Successors and Assigns ......................................................................... 46
   20.11 Counterparts .......................................................................................... 46
   20.12 Facsimile Delivery .................................................................................. 46
   20.13 Liquidated Damages Not Penalty ........................................................... 46
   20.14 Estoppel Certificates .............................................................................. 46
EXHIBIT A - SITE LICENSE .................................................................................. 48
EXHIBIT 1 - SITE PLAN AND LOCATION ............................................................ 50
EXHIBIT B - CERTAIN AGREEMENTS FOR THE BENEFIT OF THE FINANCING PARTIES ........................................................................................................ 51
EXHIBIT C - SOLAR POWER AND SERVICES AGREEMENT .................................................. 53
   Schedule 1 - Specifications .............................................................................. 56
   Schedule 2 - Estimated Annual Net Revenue .................................................. 60
   Schedule 3 - Early Termination Fee ................................................................. 61
   Schedule 4 - Estimated Annual Host Site Energy Production ......................... 63
   Schedule 5 - Notice Information .................................................................... 64
EXHIBIT D - FORM OF COMMERCIAL OPERATION DATE CERTIFICATE .................................................. 65
EXHIBIT F - MILESTONE SCHEDULE .................................................................. 66
GENERAL TERMS AND CONDITIONS OF
SOLAR POWER AND SERVICES AGREEMENT FOR
FLOATING PHOTOVOLTAIC POWER SYSTEM ON OLIVENHAIN RESERVOIR

These General Terms and Conditions (“General Conditions”) are effective (“Effective Date”) and are witnessed and acknowledged by Pristine Sun Corporation, a Delaware corporation (“Provider”) and the San Diego County Water Authority (“Host” and, together with Provider, each, a “Party” and together, the “Parties”), as evidenced by their signature on the last page of this document. These General Conditions are intended to be potentially incorporated by reference into one or more Solar Power and Services Agreements that may be entered into by and between the Parties or their respective Affiliates. Except to the extent Provider and Host (or their Affiliates) ever decide to enter into a Solar Power and Services Agreement such as shown in Exhibit C, these General Conditions shall have no binding effect upon the Parties.

The signing of these General Conditions, without the signing of a Solar Power and Services Agreement such as shown in Exhibit C, only requires the Parties to continue negotiating in good faith. The Host retains the absolute and sole discretion to make any necessary decisions under CEQA or other applicable laws, including unilaterally deciding not to proceed with the project described herein without penalty. The signing of the General Conditions provides no legal obligation to proceed with the actual project unless and until the Parties have negotiated and executed a mutually acceptable Solar Power and Services Agreement based upon information produced from the CEQA environmental review process and other review. The form attached as Exhibit C is not exclusive, but an exemplar, and it may be changed as negotiations and review proceeds. The signing of the General Conditions does not create any binding contractual obligations with respect to the development of the project described herein, commit any party to a particular course of action, or commit any party to sign Exhibit C. Both Parties recognize that a no project alternative is still available to Host, notwithstanding any signing of the General Conditions. All provisions listed below are subject to the foregoing agreement as to the nature of these General Conditions.

RECITALS

WHEREAS, Provider intends to finance, develop, design, construct, operate, and maintain the solar photovoltaic generating System to be located in California in the location identified in Exhibit 1; and

WHEREAS, Provider desires to sell, and Host desires to purchase, on the terms set forth in this Agreement, all Host Site Energy generated by the System, any Green Attributes related to the generation of such Host Site Energy, and all Capacity Attributes associated with the Host Site Energy generated by the System;

WHEREAS, at a future date Host intends to purchase the entire energy output of the System, including all Green Attributes related to the System, and all Capacity Attributes associated with the System;
WHEREAS, until Host and Provider amend this Agreement to permit Host to purchase the entire energy output of the System, the parties agree that Provider shall execute power purchase agreements with offtakers for the Surplus Energy associated with the System and share the associated revenue pursuant to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

1. DEFINITIONS.

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

(a) “Actual Monthly Production” means the amount of energy recorded by the Meter during each calendar month of the Term, pursuant to Section 4.2.

(b) “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

(c) “Agreement” means these General Conditions, together with each of the Solar Power and Services Agreements (SPSAs) entered into by Provider and Host, and all the Exhibits, Schedules and Appendices hereto and thereto.

(d) “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, and certificate.

(e) “Assignment” has the meaning set forth in Section 14.

(f) “Annual Net Revenue” means the revenue less operation, maintenance, and capital costs set forth in Schedule 2 of the SPSA.

(g) “Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and
such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

(h) “Host Electrical System” means the existing electrical systems that are owned, operated, maintained and controlled by Host, including the interconnection of these systems with the local utility.

(i) “Business Day” means any day other than Saturday, Sunday or any other day on which the State of California or the governing body of the Host has declared to be an official holiday as of the Effective Date.

(j) “CAISO” means the California Independent System Operator, or any successor entity performing similar functions.

(k) “CAISO Grid” means the system of transmission lines and associated facilities that have been placed under the CAISO’s operational control.

(l) “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (i) violation of the CAISO Tariff and all applicable protocols, Western Electricity Coordinating Council (WECC) rules or CAISO operating instructions or orders or (ii) as a result of Provider’s failure to follow Prudent Electrical Practices. “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 4.6 of this Agreement.

(m) “CAISO Tariff” means the CAISO Federal Energy Regulatory Commission (FERC) Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

(n) “California Public Records Act” means California Government Code Section 6250 et seq., as amended or supplemented from time to time.

(o) “California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

(p) “Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the System can generate and deliver to the CAISO grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

(q) “CEC” means the California Energy Commission or its successor agency.

(r) “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the System has been constructed, that the CEC has pre-certified) that
the System is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy produced by the System qualifies as generation from an Eligible Renewable Energy Resource for purposes of the System.

(s) “CEQA” means the California Environmental Quality Act, California Public Resources Code Section 21000, et seq.

(t) “CEQA Determinations” means that:

(i) The lead agency conducting the review of the System as required under CEQA shall have (A) reviewed and approved the CEQA Documents, (B) issued a final land use entitlement or other discretionary permit for the System, and (C) filed a Notice of Determination in compliance with CEQA; and

(ii) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

(u) “CEQA Documents” means a final environmental impact report, mitigated negative declaration or equivalent document upon which the lead agency issued a final approval for the System.

(v) “CCR” means Covenants, Conditions, and Restrictions; those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions relating to any of the Premises.

(w) “Commencement of Work Date” means the date on which Provider begins the physical construction work at the Premises of the System which is the subject of this Agreement.

(x) “Commercial Operation” means that (i) the System is operating and able to produce and deliver Energy to Host pursuant to the terms of this Agreement; (ii) Provider shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit D; (iii) Provider shall have delivered a true, correct, and complete Commercial Operation Certificate from Provider, the Renewable Generation Equipment Supplier, and a Licensed Professional Engineer; (iv) Provider shall have delivered to Host the Delivery Term Security required under Section 19.2(a)[ii]; (v) Provider has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the System, including approvals, if any, required under CEQA for the System and related interconnection facilities;

(y) “Commercial Operation Date” means the date on which Provider achieves Commercial Operation for the System.

(z) “Confidential Information” has the meaning set forth in Section 16.1.
(aa) “Curtailment Period” means a period of time during the Delivery Term during which the generation of System Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, North American Electric Reliability Corporation (NERC), or any other reliability entity due to (i) a System Emergency, (ii) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (iii) an event of Force Majeure at or downstream from the Point of Delivery, (iv) over-generation or any other reason adversely affecting the normal function and operation of the Transmission Provider’s system, as may from time to time be identified by the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailment Period” shall not include curtailments directed for economic reasons.

(bb) “Deemed Generated Energy” means the amount of Energy, expressed in megawatt hours (MWh), that the System would have produced and delivered to the Point of Delivery, but for a curtailment event arising under Section 5.11(b), which amount MWh is calculated based on an equation that incorporates relevant System availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of System Energy that would have been delivered.

(cc) “Delivery Term” has the meaning set forth in Section 2.2.

(dd) “Delivery Term Security” shall mean the Performance Assurance that Provider is required to maintain during the period and as otherwise specified in Section 19.2(a)[ii] to secure performance of its obligations hereunder.

(ee) “Development Period Security” shall mean the Performance Assurance that Provider is required to maintain during the period and as otherwise specified in Section 19.2(a)[i] to secure performance of its obligations hereunder.

(ff) “Dispute” has the meaning set forth in Section 20.4.

(gg) “Disruption Period” has the meaning set forth in Section 4.3.

(hh) “Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term but does not include the Purchase Date, as defined herein.

(ii) “Early Termination Fee” means the value for each year of the Term as set forth on Schedule 3 of the SPSA.

(jj) “Effective Date” has the meaning set forth in the Introductory Paragraph above.

(kk) “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.11, et seq., as amended or supplemented from time to time.
(II) “Environmental Financial Attributes” shall mean, without limitation, each of the following financial rebates and incentives created under state, local or federal law that are in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under the California Solar Initiative, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of energy generated by the System; and (ii) all reporting rights with respect to such allowances.

(mm) “Estimated Annual Host Site Energy Production” means the Estimated Annual Host Site Energy Production for each year of the Term as set forth in Schedule 4 of the SPSA.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

(nn) “Expiration Date” means the date on which the Agreement terminates by reason of expiration, cancellation or termination of the Term.

(oo) “Fair Market Value” has the meaning set forth in Section 2.5.

(pp) “Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases any System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Provider (or an Affiliate of Provider) with respect to any System.

(qq) “Force Majeure Event” has the meaning set forth in Section 11.1.

(rr) “Future Green Attributes” means any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under applicable state RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the System.

(ss) “General Conditions” means these General Terms and Conditions of Solar Power and Services Agreement.

(tt) “Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Host) or prudent operators of electric generation facilities similar to the System (with respect to Provider) in the Western United States during the relevant time period, which practices, methods
and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

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

(vv) “Governmental Authority” means 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.

(ww) “Green Attributes” means, subject to the limitations in the final sentence of this definition, any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (A) any energy, capacity, reliability or other power attributes from the System, (B) production tax credits associated with the construction or operation of the System and other financial incentives in the form of credits, reductions, or allowances associated with the System that are applicable to a state or federal income taxation obligation, (C) fuel-related subsidies or “tipping fees” that may be paid to Provider to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (D) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits. If the System is a biomass System and Provider receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall
provide Host with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the System, and for all electric generation using biomethane as fuel, Provider shall transfer to Host sufficient Green Attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the System using the biomethane.

(xx) “Guaranteed Commercial Operation Date” means the date specified in Exhibit F.

(yy) “Guaranteed Construction Start Date” means the date specified in Exhibit F.

(zz) “Host” has the meaning set forth in the Introductory Paragraph.

(aaa) “Host Default” has the meaning set forth in Section 12.2 (a).

(bbb) “Host Site Energy” means the electric energy produced by or associated with the System that serves electrical loads (that are not Station Use) of Host or one or more third parties for use on property that is immediately adjacent to Site.

(ccc) “Indemnified Party” has the meaning set forth in Section 17.

(ddd) “Initial Term” has the meaning set forth in Section 2.1.

(eee) “Installation Work” means the construction and installation of each System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Site.

(fff) “Invoice Date” has the meaning set forth in Section 7.4.

(ggg) “kWh Rate” means the price per kilowatt hour (kWh) set forth in each of the SPSAs.

(hhh) “Licensed Professional Engineer” means a person acceptable to Host in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the power industry specific to the technology of the System, (iii) has no economic relationship, association, or nexus with Provider or Host, other than to meet the obligations of Provider pursuant to this Agreement, (iv) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the System or of a manufacturer or supplier of any equipment installed at the System, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

(iii) “Liens” has the meaning set forth in Section 8.1 (f).

(jjj) “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Site.

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

(III) “Meter” has the meaning set forth in Section 4.2.

(mmm) “Meter Service Agreement” has the meaning set forth in the CAISO Tariff.

(nnn) “NEPA” means the National Environmental Policy Act, 40 CFR Parts 1500-1508.

(ooo) “Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

(ppp) “Option Price” has the meaning set forth in Section 2.4.

(qqq) “Outside Commercial Operation Date” has the meaning set forth in Exhibit F.

(rrr) “Party” or “Parties” has the meaning set forth in the Introductory paragraph above.

(sss) “Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

(ttt) “Performance Assurance” means collateral provided by Provider to Host to secure Provider’s obligations hereunder and includes Development Period Security and Delivery Term Security.

(uuu) “Permitted Recipients” has the meaning set forth in Section 16.1.

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

(www) “Point of Delivery” means the point of interconnection to the San Diego Gas & Electric (SDG&E) System.

(xxx) “Power Purchase Agreement” means an agreement entered into with a power offtaker.

(yyy) Provider” has the meaning set forth in the Introductory Paragraph above.

(zzz) “Provider Default” has the meaning set forth in Section 12.1 (a).

(aaaa) “Purchase Date” means with respect to each System, each Business Day that occurs on the date that is 180 days after each successive annual anniversary of the Commercial
Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is 5 years and 364 days after the Commercial Operation Date, or after the 5th anniversary of the Commercial Operation Date.

(bbbb) “Renewable Energy Credits” has the meaning set forth in California Public Utilities Code Section 399.12(h) and California Public Utilities Commission (CPUC) Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

(cccc) “Renewable Generation Equipment Supplier” means the supplier of the solar electric generating equipment for the System, selected by Provider.

(dddd) “Renewal Term” has the meaning set forth in Section 2.2.

(eeee) “Replacement Capacity Attribute” means Capacity Attributes, if any, equivalent to those that would have been provided by the System during the Contract Year for which the Replacement Product is being provided.

(ffff) “Replacement Energy” means Energy produced by a facility other than the Facility that, at the time delivered to Host, is (i) both RPS Compliant, (ii) qualifies under Public Utilities Code Section 399.16(b)(1), and (iii) includes Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the System during the Contract Year for which the Replacement Energy is being provided.

(gggg) “Replacement Price” means the price at which Provider, acting in a commercially reasonable manner, purchases Replacement Product, or, absent such a purchase, (i) the SP-15 Price, plus (ii) the price of the Green Attributes that would have been generated by the System valued at the Environmental Attributes Value, plus (iii) the value of Capacity Attributes, if any, equivalent to those that would have been provided by the System, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Host.

(hhhh) “Replacement Product” means (a) Replacement Energy, and (b) Replacement Capacity Rights.

(iiii) “Security Interest” has the meaning set forth in Section 9.2.

(iiij) “Site” means the location of the System at the Premises, as specified in the SPSA.

(kkkk) “Shortfall Makeup Period” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

(llll) “Solar Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.
“SPSA” means the Solar Power and Services Agreements (including the Schedules and Exhibits attached thereto) entered into by Provider and Host substantially in the form of Exhibit C hereto, which each incorporates these General Conditions, and are each incorporated into and made a part of the Agreement.

“Solar Services” means the supply of electrical energy output from a System and scheduling, delivery, and sales to offtaker(s).

“Solar Services Payment” has the meaning set forth in Section 7.1.

“Specifications” has the meaning set forth in Section 3.1.

“Stated Rate” means a rate per annum equal to the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Law.

“Station Use” means energy consumed within the System’s electric energy distribution system as losses, as well as energy used to operate the System’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, plant lighting, monitoring systems, weather station equipment, communications systems, control systems, and panel washing pumps.

“Surplus Energy” means all energy generated by the System net of Station Use and any Host Site Energy.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, electrical poles and line, wiring, and anchorage systems, more specifically described in Schedule 1, Specifications, of the SPSA.

“System Energy” means the total electrical output of the System including both Host Site Energy and Surplus Energy.

“System Loss” means loss, theft, damage or destruction of a System, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Provider's gross negligence or intentional misconduct, (ii) Provider's breach of maintenance obligations under the Agreement, or (iii) normal wear and tear of such System.

“System Operations” means Provider's operation, maintenance and repair of the System performed in accordance with the requirements set forth herein.

“System Term” means for the System the period beginning on the Commercial Operation Date and ending upon the expiration or termination of the Agreement.

“Term” has the meaning set forth in Section 2.2.
“Transfer Time” has the meaning set forth in Section 6.1.

“Transmission/Distribution Owner” means any entity or entities responsible for the interconnection of the Facility or transmitting the Delivered Energy on behalf of Provider from the Facility to the Delivery Point.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.2 Interpretation.

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

2. TERM AND TERMINATION.

2.1 Effective Date.

This Agreement shall be effective as of the date on which the Parties have executed this Agreement (the “Effective Date”). Host shall confirm its acknowledgement of the Effective Date by electronic mail to Provider as soon as reasonably practicable following the Effective Date, providing as attachments to such electronic mail electronic copies of (i) the cover page of this Agreement and the appendices hereto, dated with the Effective Date and (ii) a conformed copy of this Agreement.

2.2 Term.

The term of the Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the last Commercial Operation Date to occur with respect to any System (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may renew for up to three additional five (5) year terms (a “Renewal Term”), if written notice of renewal is given by either Party to the other Party at least one hundred eighty (180) days prior to the expiration of the Initial Term and the other Party provides their express written consent to renew the Agreement within thirty (30) days of the request to renew. If such consent is not provided within such 30-day period, this Agreement shall expire as of the last day of the Initial Term. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the “Term.” During the Renewal Term, if any, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred eighty (180) days' prior written notice to the other Party. The Estimated Annual Host Site Energy Production for any Renewal Term shall be mutually agreed to by the Parties on or before the first day of any such Renewal Term.
2.3 Early Termination.

(a) Host may terminate the SPSA at any time after the date which is 91 days after the 15th anniversary of the Commercial Operation Date of the SPSA.

(b) Host may terminate for any reason upon ninety (90) days' prior written notice.

(c) The SPSA may be terminated as provided in Section 5.3, Section 6.1, Section 11.2, or Section 13.3. Financial lender may step in to cure and prevent termination if deemed appropriate and subject to Host’s approval. In the event of any such termination, except to the extent specified otherwise herein, Host shall pay to Provider, as liquidated damages except in cases after the project is commissioned where water quality cannot be mitigated to comply with standard, operational issues that impede Host in serving its member agencies, emergencies that cause the Host to draw the reservoir down and inability to replenish water due to imported water supply issues, effects on Lake Hodges due to environmental contamination or reservoir drawdown and issues that impede the Water Authority’s ability to comply with the terms of the Olivenhain-Hodges Power Purchase and Sales Agreement, the Early Termination Fee set forth in Schedule 3 - Early Termination Fee of the SPSA, and Provider shall cause the System to be disconnected and removed from the Site.

(d) Within one hundred eighty (180) calendar days of any such notice of termination from Host, Provider shall remove the System and shall remediate and restore the Site to the condition it was in preceding the installation of the System as set forth in Section 2.6. Subject to Section 18.6 of the Agreement, upon Host's payment of the Early Termination Fee, the SPSA shall terminate automatically. In the event that Host terminates the SPSA pursuant to this paragraph, Provider shall be solely responsible for any penalties, damages, or any other remedies owed to an offtaker pursuant to a PPA. Provider shall also remove the System and shall remediate and restore the Site to the condition it was in preceding the installation of the System as set forth in Section 2.6.

2.4 Purchase Option.

On any Purchase Date with respect to a System no earlier than the sixth anniversary of the Commercial Operation Date, so as long as a Host Default shall not have occurred and be continuing, Host shall have the option to purchase System (the “Purchase Option”) for a purchase price (the “Option Price”) equal to the greater of, for such System, (a) Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in the SPSA. To exercise the Purchase Option with respect to any System, Host shall, not less than one hundred eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Host’s intent to exercise the Purchase Option on such Purchase Date. Within thirty (30) days of receipt of Host's notice, Provider shall notify Host in writing of the Option Price for the System. Host shall have a period of sixty (60) days after such notification to confirm or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System by written notification to Provider. In the event Host does not dispute the Fair Market Value and confirms its exercise of the Purchase Option in writing to Provider (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Host on the Purchase Date, free and clear of any Liens, and (B) assign all
vendor warranties for the System to Host, and (ii) Host shall pay the Option Price for the System to Provider on the Purchase Date, in accordance with any previous written instructions delivered to Host by Provider or Provider's Financing Party, as applicable, for payments under the SPSA. Upon such execution of documents and payment of the Option Price, the SPSA shall terminate automatically and Host shall own the System and all Green Attributes relating to such System. For the avoidance of doubt, Host's exercise of its Purchase Option and Host's payment to Provider of the Option Price for the System shall be in lieu of and instead of any payments described in Section 2.2, with respect to the System, which would have accrued had Host not exercised its Purchase Option and not paid the Option Price to Provider but it shall not be in lieu of and instead of any and all payments which accrued prior to Host's payment to Provider of the Option Price. In the event Host retracts its exercise of, or does not timely confirm, any exercise of the Purchase Option, the provisions of the Agreement shall be applicable as if Host had not exercised the Purchase Option, and Host shall promptly reimburse Provider for any costs and expenses incurred by Provider in connection with such retracted exercise of the Purchase Option, up to a maximum aggregate amount of $1,500. Subject to the assignment of any vendor warranties as provided above, enforcement of which by Host shall be solely against the issuer of such warranty, Host's purchase of any System from Provider shall be on an as-is, where-is basis, and shall be without any warranty of any kind from Provider.

2.5 Determination of Fair Market Value.
If the Option Price indicated by Provider in accordance with Section 2.4 is disputed by Host, within thirty (30) days of receipt of Host's notice of dispute by Provider, the Fair Market Value of the System shall be determined by the mutual agreement of Host and Provider; provided, however, if the Parties cannot mutually agree to a Fair Market Value within 10 days after an exercise notice is provided under Paragraph 3.2, the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. The appraiser shall act reasonably and in good faith to promptly determine Fair Market Value, inclusive of a reasonable terminal value after the term of any SPSA and/or third party PPAs for Surplus Energy, and shall set forth such determination in a written opinion delivered to the Parties at least 45 days prior to the Purchase Date. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. In the case of the sale option, Provider shall have 5 business days from receipt of the appraisal to revoke its option notice by providing written notice of such revocation to Host. The Parties shall each be responsible for 50 percent of the cost of any appraisal. Unless Host has retracted its exercise of the Purchase Option, or has failed to confirm its exercise of the Purchase Option by written notification to Provider within thirty (30) days after receipt of Provider's written notification of the Option Price to Host with respect to the System, Host shall be obligated to purchase and the Provider shall be obligated to sell the System at the Option Price. Upon Host's payment of the Option Price to the Provider for the System, Provider shall furnish the System, including all components thereof, to Host. All warranty documents and warranties for the System shall be transferred to Host within thirty (30) days of Host's payment to Provider. Provider shall complete all documentation required to transfer complete title to the System (free of Liens or claims) and any warranties to Host.

2.6 Removal of System at Expiration/Termination.
Subject to Host's exercise of the Purchase Option, or payment of the Early Termination
Fee, pursuant to Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider’s expense, not later than ninety (90) days prior to the expiration of the Term, present a decommissioning plan for the System to Host. Host shall approve or recommend modifications to the decommissioning plan within fifteen (15) days of the date on which Provider presents the decommissioning plan to Host. The decommissioning plan shall include the removal of all physical surface and subsurface material related to the System and restoration of the surface of the land to substantially the same condition it was in at the Effective Date, including returning the land to the same grade as of the Effective Date, reasonable wear and tear, condemnation, and casualty damage excepted (all hereinafter referred to as “Restoration”). The Restoration shall be completed within nine (9) months after approval of the decommissioning plan by Provider. For purposes of Provider's removal of the System, the covenants of Host set forth in Section 8.3 shall remain in effect until the final date of removal of the System. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date or dates, Host shall have the right, at its option, to either (i) remove the System to a public warehouse and restore the Site to its original condition at Provider's cost or (ii) leave the System in place and receive electricity from the System, but without any payment obligation to Provider, notwithstanding any provision to the contrary herein. To the extent the Agreement is terminated as a result of any Host Default or otherwise as a result of any action, omission or failure to act by Host, Host shall be obligated to pay for Provider's costs of removal of the System and restoration of the Site.

2.7 Host Conditions of the Agreement Prior to Installation.

(a) In the event that the following event has occurred, through no fault of Host, Host may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other:

(i) The Commercial Operation Date has not occurred on or before the Commercial Operation Deadline as that term is defined in Section 2.1.

(ii) The Provider has not executed Power Purchase Agreement with offtaker(s).

(b) In the event that the following events or circumstances have occurred prior to the Commencement of Work Date, through no fault of Host, Host may (at its sole discretion) terminate the Agreement by written notice to Provider on or before the Commencement of Work Date, in which case neither Party shall have any liability to the other:

(i) There has been a material adverse change in Provider's creditworthiness.

(ii) There has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the System on the Site.

(iii) Provider has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

(iv) Provider has determined that there are easements, CCRs or other liens or
encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(v) The system design, construction, and operations and maintenance details have not been mutually agreed upon.

2.8 Environmental Compliance.
Provider shall comply with the applicable requirements of the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”), including any study required for NEPA and CEQA compliance. Host shall reasonably cooperate with Provider in connection to complying with NEPA and CEQA requirements, as may be applicable. Either Party, following the completion of NEPA or CEQA study, if such studies are required, and prior to the Commencement of Work Date, may terminate this Agreement by written notice to the other Party without any further liability should environmental compliance measures or unforeseen site conditions render the construction of the System economically disadvantageous for the terminating Party or the time required to implement any environmental compliance measures or remediation exceed the terminating Party's reasonable expectations. Nothing set forth herein shall be interpreted to require either Party to undertake environmental remediation at the Premises if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the System.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work.
Provider will cause each System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the SPSA (the “Specifications”) and Applicable Law, including but not limited to, the payment of prevailing wages, if applicable. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Provider or by independent contractors with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Prior to the commencement of construction on any System, Provider shall deliver to Host for its review and approval (which approval shall not be unreasonably withheld) a complete set of plans and specifications relating to the installation of the System, which shall comply with all applicable uniform construction codes. Host shall be deemed to have approved such plans and specifications if Host fails to transmit notice of disapproval within twenty-one (21) calendar days from the date that Provider delivers the plans and specifications to Host. Host shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Provider is adhering to the Specifications for each System. Provider is required to perform all work at the Sites between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, except on Host recognized holidays and in the case of an emergency. All Installation Work is to be performed in a manner that minimizes inconvenience to and interference with Host's use of the Premises, to the extent commercially practicable. Routine, non-emergency deliveries by Provider shall be limited to construction hours only. During construction, noise levels of optional activities, such as radio or boom boxes, shall be appropriate for the surrounding places of business. Provider is to address
unacceptable optional noise within one hour of being notified by the Host. Loudspeaker will be used for emergencies only, and not during routine operations. Workers are to use person-to-person communication devices for routine activities. Except in the case of an emergency, Provider shall give 5 days' notice to Host for any testing procedures. Except in the case of an emergency, any work requiring power to be turned off at any facility will require a minimum one-week notice and coordination with Host. In the event of an emergency, Provider is to coordinate power shut off with Host.

3.2 Approvals; Permits.
Provider shall obtain all necessary approvals and permits for the Installation Work, including but not limited to those related to the Local Electric Utility, CAISO, FERC, resources agencies, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR, and Host shall timely provide available information that is necessary for obtaining applicable permits upon request of Provider. Host shall bear no liability for Provider's failure to obtain any such permit or approval or failure to comply with any permit requirements or post-construction provisions. Host will cooperate with Provider in obtaining such permits; provided, however, that this covenant to cooperate shall not be deemed or construed as a waiver of any right or obligation of Host acting in its governmental capacity. This is a project that would be under CEQA Guideline 15051(b) and it is expected that the County of San Diego will be the lead agency. Provider shall adhere to existing Bureau of Land Management patents associated with the Site.

3.3 System Acceptance Testing.
(a) Provider shall conduct testing of each System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by a majority of photovoltaic solar system integrators in the United States. Host shall accept delivery of test energy, if any, prior to the Commercial Operation Date. There shall be no charge imposed upon Host for Provider's provision of this test electricity prior to the Commercial Operation Date.
(b) During the start-up, the Host, and/or its independent engineer/consultant, will observe and verify each system performance. Required commissioning and acceptance testing services include:
   (i) Prior to submittal of the "permission to operate" request to the Local Electric Utility, the Provider shall furnish to the Host written documentation from a registered electrical engineer, structural engineer and geotechnical engineer certifying that the System has been installed in accordance with code and design drawings.
   (ii) If the results of such testing by Provider indicate that a System is capable of generating electric energy for twenty-four (24) continuous hours, using such instruments and meters as have been installed for such purposes, and the interconnection to the local electrical grid and all review and approvals have been provided by the applicable utility and the State of California, Provider shall send a written notice to Host to that effect, and the date of such notice shall be the “Commercial Operation Date” for the System.
   (iii) The System must also successfully deliver power for 30 consecutive days following completion of the System. Otherwise System acceptance testing shall be repeated until delivery is achieved for 30 consecutive days.

3.4 Connection.
Provider shall provide all necessary wiring requirements from each System to the applicable Point of Delivery. Provider is responsible for the interconnection of each System to the Host Electrical System within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of the Agreement.

3.5 **As-Built Drawings.**
Within sixty (60) days after any Commercial Operation Date, Provider shall submit a copy of as-built drawings of the System to the Host.

3.6 **Posting of System Development Security.**
Within ten (10) days after the Development Commencement Date, Provider shall furnish to Host, Provider Development Security, as further described in Section 19.2.

3.7 **Subcontracts.**
Provider shall cause provisions to be included in each Subcontract that provide: (i) Host with rights of access to the System and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols and orientation) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Host may reasonably request, subject to redaction of confidential or proprietary information; and (ii) that the personnel of, and consultants to, the applicable contractor and Provider shall be available to Host and its agents, representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the System or the development, engineering, construction, installation, testing or performance thereof. Provider shall deliver to Host a schedule of the performance of initial performance tests and all other tests required under each Subcontract.

3.8 **Certification of Commercial Operation Date.**
Provider shall provide Host with written notice in accordance with Section 15.1 when Provider believes that Provider is approximately thirty (30) days from achieving the Commercial Operation Date. Provider shall thereafter provide Host with written weekly updates on the status of Provider’s progress in achieving Commercial Operation. Provider shall provide Host with notice in accordance with Section 15.1 when Provider believes that all conditions precedent to achieving Commercial Operation of the System as specified in the definition of “Commercial Operation” have been satisfied and that the System has therefore achieved Commercial Operation. The Commercial Operation Date shall be deemed to have occurred as of the next Business Day following the date of Provider’s written notice of Commercial Operation.

3.9 **Milestone Schedule.**
(a) Attached as Exhibit F is a milestone schedule with deadlines for the development of the System through the Commercial Operation Date (each milestone, a “Milestone” and each date by which a Milestone is to be completed, a “Milestone Date”). Provider shall achieve each Milestone by the specified Milestone Date. Until the Commercial Operation Date, Provider shall provide Host with a report on a quarterly basis (until six (6) months prior to the scheduled Commercial Operation Date, at which time such reports shall be provided on a monthly basis) that includes: (i) a description of the Site plan for the System, (ii) a description of any planned
changes to the System or Site plan since the previously delivered report, (iii) a bar chart schedule showing progress to achieving the remaining Milestones, (iv) a chart showing the critical path schedule of major items and activities, (v) a summary of activities at the System during the previous month, (vi) a forecast of activities during the then-current month, (vii) a list of any issues that could impact Provider’s achievement of Milestones by the applicable Milestone Dates, and (viii) pictures, in sufficient quantity and of appropriate detail, documenting construction and startup progress with respect to the System. If Provider anticipates that it will not achieve a Milestone by the applicable Milestone Date, Provider shall promptly prepare and deliver to Host a remedial action plan (“Remedial Action Plan”) which shall set forth (1) the anticipated period of delay, (2) the basis for such delay, (3) an outline of the commercially reasonable steps that Provider is taking to address the delay and to ensure that future Milestones, including the Guaranteed Commercial Operation Date, will be timely achieved, (4) a proposed revised date for achievement of the applicable Milestone and (5) such other information and in such detail as may be reasonably requested by Host.

(b) Each Milestone Date (other than the Outside Commercial Operation Date) shall be extended, on a day-for-day basis to the extent Provider is actually, demonstrably and unavoidably delayed in achieving such Milestone due to (i) the failure by Host to perform any covenant or obligation under this Agreement or (ii) Force Majeure.

(c) If Provider fails to achieve any Key Milestone by the applicable Milestone Date (as may be extended pursuant to Exhibit F), Provider shall pay to Host liquidated damages (“Delay Damages”). The amount of Delay Damages shall be calculated as (i) the number of days between such missed Milestone Date and the date upon which either (A) such Key Milestone is achieved, or (B) Host terminates this Agreement pursuant to Section 12 multiplied by (ii) Two Thousand Dollars ($2,000) (the “Daily Delay Amount”), subject to a maximum amount for any Key Milestone equal to the Daily Delay Amount multiplied by three hundred sixty-five (365) days. If, after the conclusion of such three hundred sixty-five (365) day period, Provider has not achieved any such Key Milestone, Host shall have the right in its sole discretion to either (1) terminate this Agreement, or (2) allow Provider to continue to pay Delay Damages to Host, during which time Host shall not terminate this Agreement based on Provider’s failure to timely achieve a Key Milestone. If Provider, notwithstanding having failed to timely achieve any other Key Milestone, is able to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date (and prior to the exercise by Host of its right to terminate this Agreement), then Host shall refund to Provider any amounts previously paid to Host as Delay Damages.

(d) In no event shall the Commercial Operation Date be extended beyond the Outside Commercial Operation Date, which date shall not be subject to extension except by mutual written agreement of the Parties.

(e) The damages that Host would incur due to Provider’s failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Delay Damages are a fair and reasonable calculation of such damages, and shall be Provider’s sole liability and obligation, and Host’s sole right and remedy, other than termination of this Agreement, for Provider’s failure to
achieve any Key Milestone by the Milestone Date therefor.

3.10 Decommissioning and Other Costs.
Host shall not be responsible for any cost of decommissioning or demolition of the System or any environmental or other liability associated with the decommissioning or demolition of the System without regard to the timing or cause of the decommissioning or demolition. Provider agrees to indemnify Host for any costs incurred by Host if Host becomes required, whether statutorily or otherwise, to bear the cost of any decommissioning or demolition of the System or any environmental or other liability associated therewith.

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator.
The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Host's negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed by Host.

4.2 Metering.
Provider shall install and maintain utility grade kilowatt-hour (kWh) meters for the measurement of electrical energy produced by each System (the “Meter”) and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises. Such installation and maintenance will be at the sole cost of the Provider. To the extent that the interconnection agreement between Host and the Local Electric Utility requires calibration of Provider's Meters, Provider shall perform or cause to be performed such calibration and Provider shall bear the costs to perform such calibration.

(a) Meter Reading. Readings of the Meters shall be conclusive as to the amount of output; provided that if a Meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(b) (iv), or registers inaccurately, measurement of output shall be determined by estimating by reference to quantities measured during periods of similar conditions when such Meter was registering accurately. Provider shall read each Meter at the end of each calendar month, and shall record the output delivered to Host. The Meters shall be used as the basis for calculating the Solar Services Payments due under this Agreement.

(b) Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of any Meter:

(i) If either Party disputes the accuracy or condition of a Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) business days after receiving such notice from the disputing Party, advise the disputing Party in writing as to the disputing position concerning the accuracy of such Meter and the non-disputing Party's reasons for taking such position.
(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the applicable Meter.

(iv) If the Meter is found to be inaccurate by not more than 2 percent, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than 2 percent or if such Meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of Solar Services delivered for no more than the preceding six (6) months and Provider shall either invoice or credit Host for the difference between the amounts previously paid and the amounts that would have been paid based on the correct amounts of Solar Services delivered, and (3) Provider shall bear the cost of inspecting and correcting the Meter.

4.3 Additional Technologies on Premises.

The Provider shall allow the Host to connect additional technologies to the System, including but not limited to energy storage devices and wind turbines. The Provider shall allow an annual disruption of the solar system of up to 5 business days for interconnection and/or maintenance of new technologies with System. Host shall not be obligated to pay Provider for lost revenues associated during the disruption. Should additional technologies be installed at the same time as the System, Provider will coordinate its installation with those of other contractors. If Host installs any energy storage device that is directly connected to or integrated with the System, then Provider shall use commercially reasonable efforts to maximize any additional value associated with the energy storage devices including any potential reduction in costs or fees, or any increased revenue. Provider may also connect additional technologies to the System subject to Host approval.

4.4 Operations During Emergency Drawdown.

Provider acknowledges that Olivenhain Reservoir (“Reservoir”) is designed to provide water to the San Diego Region during emergency conditions including, but not limited to, drought or earthquake. During an emergency condition, Host may (i) rapidly reduce the water level of the Reservoir; or (ii) completely drawdown the Reservoir. As specified in Schedule 1, Provider shall design the System to generally continue to operate during such an emergency condition. In the event of an emergency condition that may result in a drawdown of the Reservoir, Host shall provide notice to Provider within 2 days of discovering the conditions leading to the emergency condition.

(a) Not later than 180 days after the effective date of this Agreement, Provider shall present to Host a proposed Emergency Drawdown Operations Plan, which shall specify the specific design elements or actions for operations during an emergency condition. If the Emergency Drawdown Operations Plan specifies the removal of all or part of the System during a complete drawdown, Provider shall propose steps for storage of the parts, restoration of the system after the Reservoir returns to a sufficient level for System operations, and approval by the Host that system is fully functional. The Emergency Drawdown Operations Plan shall specify that Provider is responsible for repair and replacement of the System in the event of a drawdown,
and set forth a schedule for this repair and replacement.

(b) Host shall either approve or propose modifications to the Emergency Drawdown Operations Plan within 90 days of submission by Provider. The Parties shall use best efforts to agree on a final Emergency Drawdown Operations Plan prior to the Commencement of Work Date.

4.5 Temporary Shutdowns, Relocation of System.

Host may request that Provider temporarily stop operation of the System for any purpose reasonably related to Host's maintenance and improvement of the Site at which the System is located. For a shutdown not to exceed seventy-two (72) hours within thirty-six (36) months of a prior requested shutdown, Host shall not be obligated to pay Provider for lost revenues associated with the shutdown. For all other shutdown periods requested by Host, Host will pay Provider an amount equal to the sum of payments that Host would have made to Provider hereunder for Adjusted Delivered Energy from the System that would have been produced during the period of the shutdown, unless the shutdown is for maintenance or repairs that were due to the failure of components or installation of the Generating System. If a shutdown request has not been made by Host for 36 months, and the shutdown period that the Host subsequently requests is longer than 72 hours, Host shall only be responsible for payment to Provider for the Adjusted Delivered Energy that would have been produced from the 73rd hour of the shutdown until the end of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first year of the Generating System's operations, on the estimated levels of production and, after the first year of the operations, based on actual operation of the System in the same period in the previous calendar year, unless Provider and Host mutually agree to an alternative methodology.

4.6 CAISO Agreements; Interconnection Agreements; Scheduling.

During the Delivery Term, Provider shall operate the System in compliance with the Transmission/Distribution Owner tariffs, the CAISO Tariff, and all Laws. Provider shall secure and maintain in full force all of the CAISO agreements, certifications and approvals required in order for the System to comply with the CAISO Tariff, including executing and maintaining, as applicable, a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver Host Site Energy to Host and Surplus Energy to Offtakers. Provider shall also comply with any modifications, amendments or additions to the applicable tariffs, protocols and Laws; provided that Providers shall be required to enter into a Participating Generator Agreement with the CAISO only if the System’s net capacity is 500 kW or greater or if the CAISO Tariff requires or provides Provider the option to enter into such an agreement. Provider shall arrange and pay independently for any and all necessary costs under a Participating Generator Agreement, Meter Service Agreement, interconnection agreement, and/or any other agreement necessary to deliver Host Site Energy to Host and Surplus Energy to Offtakers.

5. DELIVERY OF SOLAR SERVICES.

5.1 Host Site Energy.

Subject to Section 5.2, during the Delivery Term, Provider shall sell and deliver, or cause
to be delivered, and Host shall purchase, the Host Site Energy from the Facility.

5.2 Sale of Surplus Energy to Offtakers.
   (a) Before the Commercial Operation Date, Provider shall use good faith efforts to enter
   into one or more Power Purchase Agreements with Offtaker(s) for the sale of Surplus Energy.
   Such Power Purchase Agreements shall be subject to approval by Host. The Provider shall
   schedule and deliver electricity from the System to the applicable Point of Delivery. The
   Provider shall be responsible for all regulatory reporting associated with the activities outlined
   in Section 5.1. Sharing of net revenue shall be as set forth in Schedule 2 of the SPSA.

   (b) The maximum term of all Power Purchase Agreements executed by Provider with
   offtakers pursuant to Section 5.2(a) shall be 1 year starting on the Commercial Operation Date.
   If Host has not exercised its option to procure the entire output of the System, as provided in
   Section 5.2(c), by 90 days prior to the end date of any Power Purchase Agreements executed by
   Provider with offtakers pursuant to Section 5.2(a), then Provider may extend any Power
   Purchase Agreement term by an additional 1-year period.

   (c) Subject to Section 5.2(b), at any point during the Delivery Term, Host may elect to
   purchase the entire output of the System. If Host exercises this option, the Parties shall use best
   efforts to renegotiate the terms of this Agreement as necessary to provide Host with the total
   output of the System.

5.3 Estimated Annual Host Site Energy Production.
   The Estimated Annual Host Site Energy Production for each year of the Initial Term is
   set as forth in Schedule 4 of Exhibit C. Beginning on the Commercial Operation Date, the
   System shall produce not less than 80 percent of the Estimated Annual Host Site Energy
   Production (the “Minimum Output Requirement”) as of the Effective Date during the Initial
   Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent
   that, the failure to satisfy the Minimum Output Requirement is due to (a) System failure, damage
   or downtime attributable to third parties, (b) inverter failure or delayed repair of an inverter due
   to the claims process with the inverter manufacturer, (c) resulting from general utility outages or
   any failure of any electrical grid, (d) usage of the Premises, or buildings at or near the Premises,
   which may affect building permits, site permits and related requirements for the operation of the
   System, or that impact insolation striking the System; (e) a Force Majeure Event or (f) acts or
   omissions of Host of any of its obligations hereunder. Subject to this Section 5.3, if as of any
   anniversary of the Commercial Operation Date beginning on the third anniversary of such date,
   the actual output of the System for the prior three years (the “Actual System Output”) does not
   equal or exceed the Minimum Output Requirement for such three-year period, in its next invoice
   Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of
   the average price per kWh for commercially available, utility-provided energy in the applicable
   market during such three-year period minus the applicable kWh Rate hereunder, multiplied by
   (ii) the difference between the Actual System Output for such three-year period and the
   Minimum Output Requirement for such three-year period.

5.4 Makeup of Shortfall.
   Within thirty (30) days after the end of each Contract Year, Provider shall provide Host
with a calculation of Host Site Energy for the Contract Year. If Provider fails during any Contract Year to deliver Host Site Energy in an amount equal to the Minimum Output Requirement for the System, then Provider shall make up the shortfall (“Shortfall Energy”) in accordance with Sections 5.4 through 5.7.

5.5 Replacement Product.

Such Replacement Product shall be delivered to the Point of Delivery or such other point of delivery as is mutually agreed upon by the Parties (which point of delivery shall be deemed the “Point of Delivery” for such Replacement Product for purposes of this Section 5.5) and on a delivery schedule mutually agreed to by Provider and Host. Any additional costs or expenses associated with delivery of Replacement Product to a Point of Delivery designated under this Section 5.5 shall be borne by Provider. To the extent Provider is unable to deliver or provide sufficient Replacement Product to make up the remaining Shortfall Energy, then Provider shall, at the end of the Shortfall Makeup Period, pay Host damages in accordance with Section 5.6.

5.6 Shortfall Damages.

If Provider is required to pay damages pursuant to Section 5.5, such damages shall be an amount, for each MWh of remaining Shortfall Energy, equal to the positive difference, if any, obtained by subtracting (a) the Contract Price from (b) the Replacement Price, and adding, in the case of the positive difference, the amount of all documented and reasonable out-of-pocket costs and expenses incurred by Host to purchase such Replacement Product (“Shortfall Damages”). If Provider fails to pay Host the Shortfall Damages prior to the end of the Shortfall Makeup Period, Host shall have the right, as early as the last day of such Shortfall Makeup Period, to draw the applicable amount of Shortfall Damages owed to Host from the Delivery Term Security. The Shortfall Damages payable under this Section 5.6 shall be Host’s sole remedy, and Provider’s sole liability, for Provider’s failure to achieve the Minimum Output Requirement and to deliver Replacement Product in the amount of the Shortfall Energy, except that the foregoing shall not limit Host’s right to terminate this Agreement under Section 5.7 or exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after the accrual of such Shortfall Energy.

5.7 Shortfall Energy Termination.

If Provider fails during any two consecutive Contract Years to deliver at least sixty percent (60%) of the Minimum Output Requirement for such Contract Years then Host, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Damages for the Shortfall Energy pursuant to Section 5.6 and terminate this Agreement, provided that such termination shall be without further liability to Host; or (b) allow Provider to cure such failure by providing Host with Replacement Product or Shortfall Damages as described in Sections 5.5 and 5.6.

5.8 Title to System.

Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants
that it will use reasonable commercial efforts to place all parties, having an interest in or lien upon the real property comprising all the Premises, on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against any of the Premises which could reasonably be construed as attaching to the System as a fixture of such Premises, Host shall provide, at Provider's request, a disclaimer or release from such lien holder. Host consents to the filing by Provider, on behalf of Host, of a disclaimer of each System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of such Premises. The Provider and Host shall equally share the Intellectual Property for innovations resulting from the design of the System. Intellectual Property includes without limitation all rights to and any interests in any patent, design, trademark, copyright, know-how, trade secret and any other proprietary right or form of intellectual property (whether protectable by registration or not), specification, formula, device, drawing, design, system, and process.

5.9 Title to Premises.

Throughout the duration of the Agreement, Host shall be the legal and beneficial owner of the Premises at all times and each of the Premises shall remain the real property of Host. At no time during the Term shall Provider have or claim any interest or ownership right in any of the Premises. The Parties acknowledge that Provider's only right with respect to the entry upon and activities on the Premises are governed by the terms and conditions of the Agreement and the License granted by Host pursuant to Section 8.3(d) of the General Terms and Conditions of the Agreement.

5.10 RPS Compliance.

(a) Provider warrants and guarantees that, from the time it receives notice from the CEC that the Project is CEC Certified and at all times thereafter until the expiration or earlier termination of the Agreement, the System shall be RPS Compliant.

(b) Notwithstanding Section 5.11(a), if a Change in Law occurs after the Commercial Operation Date that causes the System to cease to be RPS Compliant, Provider shall use commercially reasonable efforts to comply with such Change in Law. If, notwithstanding such commercially reasonable efforts, the Project is still not RPS Compliant due to the occurrence of a Change in Law, Host shall remain obligated to purchase the Products at the applicable full Contract Price.

(c) From time to time and at any time requested by Host, Provider shall furnish to Host, Governmental Authorities, or other Persons designated by Host, all certificates and other documentation reasonably requested by Host or such Authorized Representatives in order to demonstrate that the System, and associated Green Attributes are RPS Compliant.

5.11 Curtailment.

(a) Provider shall reduce deliveries of System Energy to the Point of Delivery immediately upon notice from the Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods. Host shall not be obligated to pay Provider for the amount of reduced Host Site Energy arising during a curtailment under this Section 5.11(a); provided that the Parties shall calculate the amount of Deemed Generated Energy (as defined
for reductions of deliveries of Host Site Energy arising under this Section 5.11(a) for purposes of determining Provider’s compliance towards its Minimum Output Requirement. If required by the Transmission Provider, or any balancing authority or reliability entity, Provider shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the Supervisory Control and Data Acquisition (SCADA) system of Provider.

(b) In addition to the curtailments described in Section 5.11(a), Host may curtail deliveries of System Energy at any time and for the duration specified by Host. Host shall provide a minimum of ten (10) minutes’ notice to Provider of a request for curtailment under this Section 5.11(b), and Provider shall comply with such request in accordance with Prudent Utility Practices. In its curtailment notice to Provider, Host shall indicate the duration of the curtailment period, which shall be for a minimum of thirty (30) minutes, and the time at which Host requests Provider to resume delivery of the System Energy. To the extent Host requests any change in the duration of the requested curtailment period, Provider shall effectuate any such change no later than ten (10) minutes following notice from Host’s notification to Provider of the proposed change to curtailment. Provider shall respond to Host’s curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Host shall pay Provider for Deemed Generated Energy during any curtailment under this Section 5.11(b) in an amount equal to the Contract Price.


6.1 Transfer of Green Attributes.

For and in consideration of Host entering into this Agreement, and in addition to other consideration under this Agreement, Provider shall transfer to Host, and Host shall receive from Provider, all right, title, and interest in and to all Green Attributes, whether now existing or acquired by Provider or that hereafter come into existence or are acquired by Provider during the term of this Agreement associated with the Host Site Energy. Provider agrees to transfer and make such Green Attributes available to Host immediately to the fullest extent allowed by applicable law upon Provider’s production or acquisition of the Green Attributes. Provider shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Green Attributes associated with Host Site Energy to any Person other than Host or attempt to do any of the foregoing with respect to any of the Green Attributes.

6.2 Reporting of Ownership of Green Attributes.

During the term of this Agreement, Provider shall not report to any Person that the Green Attributes granted hereunder to Host belong to any Person other than Host, and Host may report under any program that such Green Attributes purchased hereunder belong to them.

6.3 Green Attributes.

Upon request by Host, Provider shall take all actions and execute all documents or instruments necessary under applicable law, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Green Attributes throughout the term of this Agreement.
6.4 **WREGIS.**
In furtherance and not in limitation of Section 6.3, prior to Provider’s first delivery of Host Site Energy hereunder, Provider shall register Project with WREGIS (or any successor system) to evidence the transfer of any Green Attributes considered Renewable Energy Certificates (RECs) under applicable law or any voluntary program (“WREGIS Certificates”) associated with Host Site Energy in accordance with WREGIS reporting protocols and WREGIS Operating Rules. After the Project is registered with WREGIS, Provider shall transfer WREGIS Certificates from Provider’s WREGIS account to Host’s WREGIS account, as designated by Host. If Host does not have WREGIS account, Provider shall retire WREGIS Certificates into an appropriate retirement account on behalf of Host. Provider shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Project, maintaining its account, acquiring and arranging for a Qualified Reporting Entity (“QRE”) and any applicable QRE agreements, and transferring WREGIS Certificates to Host or any designees. Provider shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month.

6.5 **Further Assurances.**
If WREGIS (or any successor thereto) is not in operation, or for Green Attributes to which WREGIS does not apply, Provider shall document the production of Green Attributes other than RECs by delivering with each invoice to Host an attestation for the amount of such Green Attributes associated with [Onsite Energy Output], if any, for the preceding month. At Host’s request, the Parties shall execute all such documents and instruments and take such other action in order to affect the transfer of the Green Attributes specified in this Agreement to Host and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Green Attributes throughout the term of this Agreement.

7. **PRICE AND PAYMENT.**

7.1 **Consideration.**
Subject to the sharing of net revenue set forth in Schedule 2 of the SPSA and commencing on the Commercial Operation Date, Provider shall pay to Host a monthly payment (the “Solar Services Payment”) for the Solar Services generated by the System during each calendar month of the Term equal to the product of (i) Actual Monthly Production for each System for the relevant month multiplied by (ii) the applicable kWh Rate set forth in the Power Purchase Agreement with the offtaker(s).

7.2 **Minimum Revenue Payment.**
Host’s share of the revenue as calculated pursuant to Section 7.1 and Schedule 2 shall not be less than $95,000 (“Minimum Revenue Payment”) in any Contract Year. If Host’s actual revenue share at the end of a Contract Year is less than the Minimum Revenue Payment, then Provider shall pay Host an amount equal to the positive difference between Host’s actual share of revenues and the Minimum Revenue Share (“Minimum Revenue Shortfall”). If Provider fails to pay Host the Minimum Revenue Shortfall within six months of the end of the applicable Contract Year, Host shall have the right, to draw the applicable amount of Minimum Revenue Shortfall owed to Host from the Delivery Term Security.
7.3 **Negative Pricing.**

Any cost, fee, or charge associated with System energy during a period in which the CAISO settlement price for settlement interval is negative shall be the sole responsibility of Provider and shall not be allocated to Host pursuant to Section 7.1 and shall not limit or otherwise reduce the Minimum Revenue payment specified in Section 7.2.

7.4 **Invoice.**

Provider shall provide Host a report, on or about the first day of each month that Solar Services are provided hereunder (each, an “Invoice Date”), for the Solar Services Payment in respect of the immediately preceding month, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent electronically to the email address provided by Host and to the address provided by Host by regular first class mail postage prepaid.

7.5 **Time of Payment.**

Provider shall pay all undisputed amounts due hereunder within thirty days after the applicable Invoice Date.

7.6 **Method of Payment.**

Provider shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Host or by check. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

7.7 **Disputed Payments.**

If a bona fide dispute arises with respect to any payment, Host shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Host is subsequently deemed to have been due pursuant to the applicable payment, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid. If Host pays a disputed amount of any invoice that is subsequently determined to have been inappropriately invoiced by Provider, Provider shall reimburse Host the disputed amount plus interest which shall accrue at the Stated Rate on such amount from the date of the payment until the date of reimbursement to Host.

8. **GENERAL COVENANTS.**

8.1 **Provider's Covenants.**

Provider covenants and agrees to the following:

(a) **Notice of Public Comments.** Provider shall promptly notify Host if it becomes aware of any public comments about Host, Provider, or the System.
(b) Notice of Damage or Emergency. Provider shall (i) promptly notify Host if it becomes aware of any damage to or loss of the use of any System or that could reasonably be expected to adversely affect any System and (ii) immediately notify Host if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, any System or Premises.

(c) System Condition. Provider shall exercise commercially reasonable efforts to ensure that each System is capable of providing continuous Solar Services.

(d) Governmental Approvals. While providing the Installation Work, Solar Services and System Operations, Provider shall obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured by Provider to enable Provider to perform hereunder.

(e) Health and Safety/Security. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services and System Operations. Provider shall be responsible for ensuring the security of the System.

(f) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to any Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section 8.1(f), it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. It is the Provider’s sole responsibility for security of the Site, including but not limited to property, existing improvements/assets, equipment, and materials.

(g) Applicable Law. Provider shall comply with any and all applicable provisions of Applicable Law related to Provider's performance of its obligations hereunder.

(h) Interconnection Agreement. Provider shall comply with the terms and conditions of any and all interconnection agreements or any other related agreements which are entered into by and between Provider and the Local Electric Utility or Provider, Host and the Local Electric Utility for the System. To the extent that the Local Electric Utility imposes any additional costs on Host as a direct result of interconnecting the Provider's System with the Local Electric Utility's electric grid, Provider shall bear such cost.

(i) Hazardous Waste and Nuisances Prohibited.

(a) Provider shall take reasonable measures to reduce or mitigate noise, dust, and the spread of debris and construction materials during construction of the System. Provider shall use and dispose of any "hazardous material,” “hazardous waste” or “hazardous chemicals” as those
terms are used in CLERCLA (42 U.S.C. -0 9601(14)) or SARA (42 U.S.C. 110211(e)) or any similar Federal, State, or local law, statute, ordinance, regulation or order (“Hazardous Materials”), if any, brought to the Sites or the Premises in connection with the construction and installation of the System, in accordance with Applicable Law.

(b) Provider shall ensure that any and all construction materials, processes used, and cleaning activities do not negatively impact the water quality of the Site. Provider shall provide to Host Safety Data Sheets (SDS) and any other applicable cleaning and chemical product specifications for Host review prior to use. Provider is responsible for the construction, operation, and maintenance of the System to comply with applicable federal, state, and local law, statutes, and regulations concerning water quality and drinking water including but not limited to the State and Federal Drinking Water Act, the Clean Water Act and the Porter Cologne Water Quality Control Act. Provider shall promptly notify Host in the event any activity by the Provider negatively impacts water quality. Provider shall be responsible for legal or regulatory action on water quality issues stemming from Provider’s activity.

(c) Provider shall ensure that the System can withstand changes in water levels, can successfully be anchored to the bottom of the Site, and will not incur damage during reservoir activity that will result in the release of hazardous waste and hazardous chemicals at the Site.

(d) In the event that Provider (or its contractors) discovers any Hazardous Materials existing on the Premises during the construction and installation of the System that Provider reasonably believes may require removal or remediation, or that otherwise impairs or prevents the construction and installation of the System, Provider shall promptly notify Host, and Provider may, in its sole discretion, suspend construction of the System until such time as Host has removed the Hazardous Material and remediated the Premises to Provider's satisfaction. Provider shall have no responsibility or liability in respect of Hazardous Material existing at the Premises (other than any Hazardous Materials brought to the Premises by or on behalf of Provider). If Provider and Host do not agree on a schedule and terms for resumption of construction within 30 days following the discovery of such Hazardous Materials at the Site, then either Party shall have the right to terminate this Agreement without liability to the other Party (except for costs already incurred).

(j) Patents. Provider shall indemnify, defend and hold harmless Host from liability of any nature or kind, including reasonable cost and expense, for or on account of any loss resulting from any violation of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of Provider's obligations hereunder, unless otherwise specifically stipulated in Schedule 1, Specifications.

8.2 Inspection and Records.

(a) Host Inspections. Host shall have the right to visit, observe and examine the Provider and the operation thereof, upon reasonable advance notice to Provider, for the purpose of facilitating the technical operation and administration of this Agreement. Such visits and observations shall not be construed as an endorsement by Host of the design or operation of the Provider nor as a warranty by Host of the safety, durability or reliability of the Provider and shall not relieve Provider of any of its responsibilities under this Agreement.
(b) Provider and Host Records. Each Party shall keep complete and accurate records and other data required by each of them for the purposes of proper administration of this Agreement. Provider shall maintain records of all Solar Services provided under the Agreement. Among other records and data, Provider shall maintain an accurate and up-to-date operating log for the System, which log shall include (without limitation) records of:

(i) Records for Solar Services provided under the Agreement for a period of four years from the expiration or termination of the Agreement.

(ii) Real Power production for each clock half-hour, and electrical energy frequency and interconnection bus voltage at all times;

(iii) Changes in operating status, Scheduled Outages, and Forced Outages;

(iv) Any unusual conditions found during inspections;

(v) Maintenance records; and

(vi) Any other items as mutually agreed upon by the Parties.

(c) Copies of Records. Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine or to make copies of the records and data of the other Party relating to the proper administration of this Agreement, at any time during normal office hours during the period such records and data are required to be maintained. All such records or data, with the exception of records for Solar Services provided under the Agreement as provided in Section 8.2(b)(i) above, shall be maintained for a minimum of 60 calendar months after their creation, and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such period, neither Party shall dispose of or destroy any such records without 60 days prior written notice to the other Party, and the Party receiving such notice may, at its option, elect to receive such records, in lieu of their disposal or destruction, by giving the notifying Party notice of its election at least 10 days prior to the expiration of the 60-day period. Host will retain records in accordance with its Record Retention Schedule.

8.3 Host's Covenants. Host covenants and agrees as follows:

(a) Notice of Damage, Emergency or Reduction in Power. Host shall promptly notify Provider if it becomes aware of any damage to or loss of the use of any System that could reasonably be expected to adversely affect any System (such as emergency reservoir drawdown, Exhibit C, Schedule 1), immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, any System or Premises, and promptly notify Provider if it becomes aware of any interruption or material alteration of the energy supply to the Premises from the System.

(b) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to
exist any Liens on or with respect to any System or any interest therein. If Host breaches its obligations under this Section 8.3(b), it shall (i) immediately notify Provider in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Provider, and (iii) defend and indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Host shall ensure that any authorizations required of Host under this Agreement are provided in a timely manner. To the extent that only Host is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Host shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License.

(i) Host hereby grants to Provider a commercial license coterminous with the Term, which is irrevocable during the Term of the Agreement, containing all the rights necessary for Provider to use and occupy portions of the Premises and each Site for the installation, operation, maintenance and removal of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises and Sites for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the electrical wiring at each Site. Such access is further delineated and described in the Specifications for each System. Provided that the SPSA is not terminated in connection with such transfer, Host agrees to cause any transferee of a portion of the Premises containing a Site upon which a System is located, to execute a new license in favor of Provider and any Financing Party on substantially the same terms as set forth in this Section 8.3(d) and in Exhibit A.

(ii) Host hereby covenants that (i) Provider shall have access to the Premises and System during the Term of the Agreement and for so long as needed after expiration or earlier termination of the Agreement or applicable SPSA, but in no case later than one hundred eighty (180) calendar days after such expiration or earlier termination of the Agreement or SPSA, to remove the System and restore the Premises pursuant to this Agreement, and (ii) Host will not interfere with or handle any Provider equipment or System without prior written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or System removal.

(iii) Prior to the Commercial Operation Date, Host shall develop, implement and provide Provider with a copy of written policies, systems and practices reasonably satisfactory to Provider to prevent unauthorized access to and trespass on the System and to prevent harm or damage to the System.

(iv) Host further covenants that within 10 days of the Effective Date it shall deliver to Provider, a license in substantially the form attached hereto as Exhibit A for each Site.

(v) In a non-emergency event, Provider shall provide Host at least 72 hours prior written, faxed or electronic notice of an employee, subcontractor or supplier accessing the
Premises to operate, maintain, inspect or repair any System. In an emergency event, Provider shall comply, and cause all of its employees, subcontractors and suppliers to comply, with all access and security requirements and restrictions established by Host for access to and within the Premises.

(e) **Temporary storage space during installation or removal.** Host shall accommodate Provider’s request for sufficient space at or adjacent to the Site for the temporary storage and staging of tools, lay-down areas, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary (“Temporary Installation/Removal Areas”) during the Installation Work, System Operations or System removal, and access for rigging and material handling. Such Temporary Installation/Removal Areas shall be approved by the Host before commencement of construction, and Provider’s usage of the temporary space shall not interfere with operations of the Reservoir.

9. **REPRESENTATIONS AND WARRANTIES.**

9.1 **Representations and Warranties Relating to Agreement Validity.**

In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

9.2 **Representations Regarding Security Interest.**
Host has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the “Security Interest”) in the System to a Financing Party. In connection therewith, Host represents and warrants as follows:

(a) The granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) There is no existing lease, mortgage, security interest or other interest in or lien upon any of the Premises that could attach to any System as an interest adverse to or senior to Provider's Financing Party's Security Interest therein.

(c) There exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 9.

9.3 Other Representations and Warranties of Host.

(a) Host is an entity with the legal capacity to sue and to be sued, and does not have immunity under any Applicable Law from any legal action, suit or proceeding brought in connection with the performance or enforcement of its obligations under this Agreement, or collection of damages for any breach thereof. Notwithstanding the preceding sentence, claims and lawsuits as against Host, a public agency, are subject to the California Tort Claims Act, Government Code section 905 et seq., and the presentation requirements set forth therein.

(b) Host represents that it owns each of the Premises, that it has fee simple title to the Premises; and that it has the right to authorize Provider to enter the Premises, install the System and perform Provider's other obligations under this Agreement.

(c) Host is presently in compliance with all Applicable Laws concerning the Premises, including Applicable Laws related to hazardous wastes and other environmental contamination, and there are no hazardous wastes or other environmental contaminants at, on or under the Premises.

10. TAXES AND GOVERNMENTAL FEES.

10.1 Host Obligations.

Host shall reimburse and pay for any documented sales taxes, fees or charges imposed or authorized by any Governmental Authority assessed against Provider due to Provider's sale of the Solar Services to Host (other than income taxes imposed upon Provider) up to, but not to exceed, $500 per year. Any amounts in excess of the $500 cap are the responsibility of Provider. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 10.1
excludes taxes specified in Section 10.2.

10.2 Provider Obligations.
Subject to Section 10.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or possessory or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues.

11. FORCE MAJEURE.

11.1 Definition.
"Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement; (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Governmental Approval and (vii) a Party reasonably believes the Host Electrical System to be unsafe, but in no event will Provider have any responsibility to inspect or approve the Host Electrical System. A Force Majeure Event shall not be based on the economic hardship of either Party. A Force Majeure Event shall not include an emergency condition that affects the system only due to a drawdown of the Reservoir, as described in Section 4.4.

11.2 Excused Performance.
Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 11.2 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Host shall not be
excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.

11.3 Termination in Consequence of Force Majeure Event.

If a Force Majeure Event shall have occurred that has prevented Provider from performing all of its material obligations hereunder and that has continued for a continuous period of three hundred sixty-five (365) days, then Host shall be entitled to terminate the SPSA upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the SPSA shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability related to the SPSA to the other Party (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.3 (Early Termination) shall be in the SPSA. If at the end of such ninety (90) day period, such Force Majeure Event is no longer continuing, the SPSA shall remain in full force and effect, and Host's notice shall be deemed to have been withdrawn.

12. DEFAULT.

12.1 Provider Defaults and Host Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Host any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Host of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Host's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Host's Remedies. If a Provider Default described in Section 12.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Host may terminate the SPSA and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of the Provider Default has been delivered by Host to each Financing Party, and such Provider Default has not been cured within 30 days of delivery of such notice or such longer period as may be reasonably necessary to cure. Any Financing Party shall be an intended third-party beneficiary of this Section 12.1.

(c) No Early Termination Fee. Section 2.3 of the Agreement shall not apply to any termination of the Agreement by Host pursuant to this Section 12.1.

12.2 Host Defaults and Provider's Remedies.

(a) Host Default. The following events shall be defaults with respect to Host (each, a
“Host Default”):

(i) A Bankruptcy Event shall have occurred with respect to Host;

(ii) Host fails to pay Provider any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Provider of such past due amount;

(iii) Host breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Host fails to so cure, or (B) Host fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.

(b) Provider’s Remedies. If a Host Default described in Section 12.2(a) has occurred and is continuing, in addition to all rights and remedies provided at law or in equity and subject to Section 12, Provider may terminate the SPSA and upon such termination, Provider shall be entitled to receive from Host the Early Termination Fee pursuant to Section 2.3.

12.3 Removal of System.

Upon any termination of the Agreement pursuant to this Section 12, Provider will remove the System pursuant to Section 2.6 hereof, unless the Parties otherwise mutually agree in writing to leave the System in place.

13. LIMITATIONS OF LIABILITY.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES AND REPRESENTATIVES FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THE AGREEMENT. IN THE EVENT THAT, AS A RESULT OF ANY BREACH OF THE AGREEMENT BY HOST, PROVIDER IS REQUIRED TO RECAPTURE ANY INVESTMENT TAX CREDITS, TREASURY GRANTS IN LIEU OF INVESTMENT TAX CREDITS, NEW MARKETS TAX CREDITS OR OTHER FEDERAL OR STATE TAX OR FINANCIAL INCENTIVE, PROVIDER'S DIRECT DAMAGES SHALL INCLUDE COMPENSATION, ON AN AFTER-TAX BASIS, FOR ANY SUCH LOST OR RECAPTURED CREDIT OR INCENTIVE.

14. ASSIGNMENT.

14.1 Assignment by Provider.

Provider shall not sell, transfer or assign (collectively, an “Assignment”) Provider's rights or obligations under the Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Host, Provider may (i) assign the Agreement to an Affiliate of Provider; (ii) assign the Agreement in connection with any merger, consolidation or
sale of all or substantially all of the assets or equity interests of Provider and (iii) assign the Agreement to a Financing Party as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). Any assignment by Provider without any required prior written consent of Host shall not release Provider of its obligations hereunder.

14.2 Acknowledgment of Collateral Assignment.

In the event that Provider identifies a secured Financing Party and provides notice as per Schedule 5 of Exhibit C, any SPSA, or in a subsequent notice to Host, then Host hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 14 of the Agreement;

(b) acknowledges that the Financing Party as such Collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in this Agreement;

(c) agrees to comply with the provisions set forth in Exhibit B of these General Terms and Conditions; and

(d) acknowledges that it has been advised that Provider has granted the Security Interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such Security Interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 14.

14.3 Assignment by Host.

Host shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Host without the prior written consent of Provider shall not release Host of its obligations hereunder. In the event that Host sells or otherwise transfers the Premises and opts not to relocate the System, Host may either (1) terminate this Agreement and pay to Provider the applicable Early Termination Fees pursuant to Section 2.3 of the Agreement, and take title to the System if permitted to under the terms and conditions of this Agreement or (2) shall require the purchaser or transferee, as the case may be, to assume its obligations under this Agreement pursuant to an assumption agreement reasonably acceptable to Provider; provided that such purchaser or transferee has delivered documentation satisfactory to Provider evidencing its creditworthiness.

15. NOTICES.

15.1 Notice Addresses.

All notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in
Schedule 5 of the SPSA, or at such other address as may be designated in writing to the other Party from time to time. Copies of any notices provided to Provider under the Agreement shall promptly be delivered by the notifying party to each Financing Party. Any Financing Party shall be an intended third-party beneficiary of this Section 15.

15.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) business days after deposit in the mail when sent by U.S. mail.

16. CONFIDENTIALITY.

16.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Host's business (“Confidential Information”) to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, representatives and consultants, and Affiliates, and to its and its Affiliates' lenders, prospective lenders, equity investors and prospective equity investors, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, “Permitted Recipients”), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 16.1, except as set forth in Section 16.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

16.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:
(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

(e) Notwithstanding anything to the contrary herein, Provider understands that as a public agency, Host is subject to the California Public Records Act, and, as such, the Agreement and any and all records related to the Agreement are disclosable, public records. Provider shall provide timely access to any records created or maintained by Provider pursuant to the Agreement to Host for reproduction, upon request. Should Provider refuse to provide access to any documents requested by Host pursuant to a California Public Records Act request, notwithstanding the indemnification provisions of the Agreement, Provider shall bear all legal costs in responding to the California Public Records Act request and shall indemnify Host, its Board of Directors, employees, volunteers and assigns against any and all claims related to such request. This section is not subject to any limitation on liability described in this Agreement.

16.3 Goodwill and Publicity.

Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as “Retail Store,” “Distribution Center,” or such other general terms), the city and state.

16.4 Enforcement of Confidentiality Obligation.

Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 16 by the receiving Party or its Permitted Recipients or other Person to whom the
receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 16. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 16, but shall be in addition to all other remedies available at law or in equity.

17. INDEMNITY.

To the fullest extent permitted by law, Provider (“Indemnifying Party”) shall defend, indemnify and hold harmless the Host and its officers, directors, employees, agents, affiliates and representatives (each, an “Indemnified Party”) from and against any and all claims, demands, suits, causes of action, losses, penalties, obligations, liabilities, damages, and expenses (including court costs, reasonable attorney's fees, interest expenses and amounts paid in compromise or settlement) (“Loss”) to the extent related to personal injury or death, or damage to property, but only to the extent such loss results from or arises out of the negligence or willful misconduct of the Indemnifying Party, its employees, subcontractors and/or agents. Such indemnification shall not apply to the extent a loss results from or arises out of the sole negligence or willful misconduct of an Indemnified Party.

18. INSURANCE.

18.1 Generally.

Host and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs: (a) Workers' Compensation (statutory limits) and Employer's Liability Coverage of at least $1,000,000 per occurrence (b) Commercial General Liability Coverage (Occurrence Form) with limits of not less than $2,000,000 general aggregate, $2,000,000 per occurrence, and (c) Automobile Liability Coverage of at least $1,000,000 per occurrence for bodily injury and property damage. For any claims related to the System or the operation, maintenance and repair thereof, Provider's insurance coverage shall be primary. Any insurance or self-insurance maintained by Host shall be in excess of Provider's insurance and shall not contribute with it.

18.2 Property Insurance and Other Additional Insurance.

(a) Property Insurance Insuring the System. In addition to the coverage noted above, Host shall procure and maintain on an annual basis, on behalf of Provider, property insurance for the completed System with replacement value coverage of not less than $13,000,000 or such updated project cost, if such amount is lower, as determined at least 60 days prior to any work of a physical nature taking place on the site. Such property insurance for the completed System shall be in place by the day upon the Commercial Operation Date of whichever of Provider's System is the first to achieve commercial operations. Such property insurance policies on the completed System shall be written on a replacement value coverage basis and will include business interruption coverage and shall name Provider and Provider's Financing Parties as loss payees. Provider shall be responsible for a $50,000 deductible per claim for any loss. The deductible shall be paid by either the Host invoicing the Provider for the deductible amount or the deductible shall be subtracted from any final insurance settlement amount. Host hereby
waives any rights against Provider and Provider's agents, contractors and Financing Parties with respect to any damage which is covered by such property insurance.

(b) **Additional Provider Maintained Insurance.** In addition to the coverage noted in Section 18.1 above, Provider shall procure and maintain:

(i) **Builder's Risk insurance coverage on an “all risks” basis for direct physical loss damage or destruction to the work in an amount equal to the completed value of the System, to insure against such losses until the Commercial Operation Date and such insurance shall insure for off-site storage, equipment in transit, and against the perils of fire, extra expense and expediting expenses, theft, vandalism, and collapse.**

(ii) **Professional Liability coverage with limits of not less than $1,000,000 per claim and annual aggregate for design/build. Provider shall maintain such professional liability insurance policy in force for at least one (1) year following the initial Commercial Operation Date.**

18.3 **Certificates of Coverage.**

Each Party, upon request, shall furnish current certificates evidencing that the coverage required under Sections 18.1 and 18.2 is being maintained. Each Party's insurance policies provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days' written notice (10 days' notice in the event of non-payment) before the insurance is cancelled or materially altered. Any deductibles or self-insured retentions on Host's coverage must be declared to and approved by Provider. Said coverage shall provide for such liability limits and may be subject to such deductibles as Host shall deem adequate and prudent. Such liability limits may be maintained as part of or in conjunction with any other liability coverage carried by Host, and may be maintained in whole or in part in the form of insurance maintained through a joint exercise of authority created for such purpose or in the form of self-insurance by Host.

18.4 **Additional Insureds.**

Each Party shall give the other Party covered party status on its General Liability Coverage using ISO endorsement CG2026, or equivalent. Provider's insurer shall agree to waive all rights of subrogation against Host for losses paid under the terms of the insurance policy which arise from work performed by Provider, its contractors and subcontractors.

18.5 **Insurer Qualifications.**

All insurance or coverage maintained hereunder shall be maintained with companies either rated no less than A-: VII as to Policy Holder's Rating in the current edition of Best's Key Rating Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1, or as otherwise approved by each Party.

18.6 **System Loss.**

In the event of any System Loss that, in the reasonable judgment of Provider, such judgment only to be made after consultation with Provider's insurer, results in total damage, destruction or loss of any System, Provider shall, within 20 business days following the
occurrence of such System Loss, notify Host whether Provider is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Provider notifies Host that Provider is not willing to repair or replace the affected System, the SPSA will terminate automatically effective upon the delivery of such notice, and Provider shall be entitled to all proceeds of its insurance policies with respect to the System Loss, provided, however, that proceeds, if any, paid on account of damage to the Premises or interruption of Host's operations shall be paid to Host. Section 2.3 of the Agreement shall not apply to any termination of an SPSA or the Agreement by Provider pursuant to this Section 18.6.

19. CREDIT AND COLLATERAL REQUIREMENTS

19.1 Grant of Security Interest/Remedies.
To secure its obligations under this Agreement and to the extent Provider delivers Performance Assurance hereunder, Provider hereby grants to Host a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Host, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Host's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Provider or an Early Termination Date as a result thereof, Host may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Host free from any claim or right of any nature whatsoever of Provider, including any equity or right of purchase or redemption by Provider. Host shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Provider's obligations under the Agreement (Provider remaining liable for any amounts owing to Host after such application), subject to Host's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

19.2 Account for Payment to Subcontractors.
Before beginning any work on Host's premises and up to the Commercial Operation Date, Provider shall provide a Performance Assurance to Host in the amount of Thirteen Million Dollars ($13,000,000.00) or such updated project cost, if such amount is lower, as determined at least 60 days prior to any work of a physical nature taking place on the site. This Performance Assurance shall be provided in either of the following forms:

(a) An irrevocable letter of credit, funds in an escrow account or a payment bond.

(b) The Payment Assurance amount may be drawn down as contractors, suppliers and subcontractors are paid for their services and this provision will be terminated after all contractors, subcontractors, and suppliers are paid in full.

(c) All bonds shall be executed by such sureties as are admitted to transact surety insurance in the State of California. Should an objection as to the sufficiency of an admitted
surety on a bond be made, California Code of Civil Procedure Section 995.660 shall apply.

(d) The Letter of Credit shall be issued by a bank with a rating of A- or better, and qualified to do business in the United States and California.

19.3 Performance Assurance.

(a) Development Period Security and Delivery Term Security. To secure its obligations under this Agreement, Provider agrees to deliver to Host and maintain in full force and effect for the period set forth below, the following Performance Assurance:

(i) Development Period Security in the amount of $20,000 per MW in the form of cash, surety bond, or a Letter of Credit from the Execution Date of this Agreement until the return date specified in Section 18.2(b)(i) above; and

(ii) Delivery Term Security in the amount of $20,000 per MW in the form of cash, surety bond, or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 18.2(b)(i)/(ii) above.

(b) Except as set forth in Section 2.3 as it pertains to the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

19.4 Return of Performance Assurance.

Host shall promptly return to Provider the unused portion of the Development Period Security after the earlier of (A) the date on which Provider has delivered the Delivery Term Security, and (B) termination of the Agreement under Section 2.4.

(a) Host shall promptly return to Provider the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Provider arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

19.5 Interest on Cash.

If Provider provides Performance Assurance in the form of cash, Host shall pay interest on such cash held as Development Period Security or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Host shall transfer the sum of all accrued and unpaid Interest Amounts due to Provider for such security in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in the Cover Sheet.

19.6 Costs of Bonds or Letter of Credit.

If Provider provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys’ fees, including reasonably allocated costs of in-house counsel of the Host) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Provider.

20. MISCELLANEOUS.

20.1 Integration; Exhibits.

The Agreement, together with the Exhibits and Schedules attached thereto and hereto,
constitute the entire agreement and understanding between Provider and Host with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

20.2 Amendments.
This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Host.

20.3 Cumulative Remedies.
Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

20.4 Disputes.
Any dispute, controversy or claim (each, a “Dispute”) arising out of or relating to the Agreement or any breach or alleged breach hereof, upon the agreement of the Parties, may first be submitted to mediation. Should the parties agree to mediate the Dispute, said mediation shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation or, in the event the Parties do not agree upon submission of the Dispute to mediation, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement.

20.5 Limited Effect of Waiver.
The failure of Provider or Host to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

20.6 Survival.
The obligations under Sections 2.3 (Early Termination), 2.6 (Removal of System), Section 8.1 (Provider’s Covenants), Sections 8.3 (Host’s Covenants), Section 9 (Representations and Warranties), Section 10 (Taxes and Governmental Fees), Section 13 (Limitations of Liability), Section 15 (Notices), Section 16 (Confidentiality), Section 17 (Indemnity), and Section 18 (Insurance), shall survive the expiration or termination of this Agreement for any reason.

20.7 Governing Law; Waiver of Immunity.
This Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the State of California. Subject to Section 20.4, the Parties hereby consent to the jurisdiction and venue of the courts located in the County of San Diego, State of California, in resolving disputes arising under or concerning the Agreement.

20.8 Severability.
If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.
20.9 **Relation of the Parties.**

The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

20.10 **Successors and Assigns.**

This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective successors and permitted assigns.

20.11 **Counterparts.**

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

20.12 **Liquidated Damages Not Penalty.**

Host acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider’s actual damages resulting from the early termination of the Agreement. Host further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Host's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Host in lieu of Provider’s actual damages.

20.13 **Estoppel Certificates.**

Not later than fifteen (15) Business Days after request therefor, Host shall, from time to time, provide Provider with estoppel certificates confirming that this Agreement is valid, in full force and effect, and confirming such other matters as may be reasonably requested by Provider. Provider or Provider's Financing Parties shall provide Host with such estoppel certificate forms. Host shall obtain all consents required for Host to enter into and perform its obligations under this Agreement from Host's lenders and tenants, if any, and from those of any other persons with interests in the Premises. Provider shall pay for all reasonable costs which Host incurs in obtaining consents required for Host to enter into and perform its obligations under this Agreement from Host's lenders and tenants, if any, and from those of any other persons with interests in the Premises. Not later than fifteen (15) Business Days after request therefor, Host shall, from time to time, provide estoppel certificates and no disturbance agreements which recognize the rights of Provider, Provider's Financing Parties, and Provider's and Provider's Financing Party's assignees and successors under this Agreement in form and content reasonably acceptable to the requesting party.
These General Terms and Conditions are witnessed and acknowledged by Provider and Host below. For the avoidance of doubt, neither Provider nor Host shall have any obligations or liability resulting solely from its witnessing and acknowledging these General Terms and Conditions.

PROVIDER: PRISTINE SUN, LLC

By: ____________________________

Troy A. Helming
Chief Executive Officer

HOST: SAN DIEGO COUNTY WATER AUTHORITY

By: ____________________________

Maureen A. Stapleton
General Manager
EXHIBIT A -SITE LICENSE

Pristine Sun, LLC

Re: Proposed Floating Solar Power Installation at Olivenhain Reservoir. (the “Site”)

Dear Authorized Representative:

Reference is made to the Solar Power and Service Agreement (and the General Conditions incorporated therein) dated __ (the “SPSA”) and entered into by and between the undersigned San Diego County Water Authority (“Host”) and Pristine Sun, LLC (“Provider”), pursuant to which Provider will install, finance, operate, and maintain a solar photovoltaic system at the above-referenced Site. Capitalized terms used herein but not defined herein shall have the meaning set forth in the SPSA. By our signature below, we hereby grant to Provider and to Provider's agents, employees, contractors and subcontractors throughout the Term (as defined in the SPSA), and for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days, to remove the System and restore the Premises pursuant to this Agreement of the SPSA an irrevocable commercial license (the “License”), for the installation, operation, and maintenance of the System, including commercially reasonable access to, on, over, under and across the Premises during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. We further acknowledge and agree that:

The System is the personal property of Provider, and shall not be considered the property (personal or otherwise) of Host upon installation of the System at the Premises. The System is more particularly described in the Specifications.

The System shall not be considered a fixture of the Premises. Accordingly, Host hereby grants Provider and any Financing Party the right to file any UCC-1 financing statement or fixture filing that confirms its interest in the System.

Provider or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under each of the SPSA. Host will not charge Provider any rent for such right to access the Premises.

The Financing Parties have a first priority perfected security interest in the System. Provider and the Financing Parties are intended third party beneficiaries of Host's agreements in this License.

During the Term, Provider's access rights are preserved and Host shall not interfere with or permit any third party to interfere with such rights or access. The License granted hereunder shall be irrevocable except upon expiration or earlier termination of the SPSA. Provider shall have access to the Premises of the SPSA beyond the Term for the purpose of removing the System, as provided in Section 2.5 of the General Conditions.
Upon any rejection or other termination of any one or more of the SPSA pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Host shall grant a new license in favor of the Financing Parties (or their designees) on substantially the same terms as this License.

Host will not take any action inconsistent with the foregoing.

PROVIDER: PRISTINE SUN Corporation

By:________________________

Troy A. Helming
Chief Executive Officer

HOST: SAN DIEGO COUNTY WATER AUTHORITY

By:________________________

Maureen A. Stapleton
General Manager
EXHIBIT 1- SITE PLAN AND LOCATION
(Approximate and Will Be Finalized During Design)
Reference is made to the Solar Power and Services Agreement dated __ (the “SPSA”), by and between Pristine Sun, LLC (“Provider”) and the San Diego County Water Authority (“Host”). Capitalized terms used herein but not defined herein shall have the meanings set forth in the General Conditions incorporated by reference in the Agreements. Host acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that Provider may sell or assign the System or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of the Agreements and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Host in writing, Host agrees as follows, notwithstanding any contrary term of the Agreements:

(a) **Consent to Collateral Assignment.** Host consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to any Financing Party, of Provider's right, title and interest in and to the Agreements:

(b) **Notices of Default.** Host will deliver to each Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Host under the Agreements, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to all Financing Parties. Within one hundred and twenty (120) days of Provider achieving Commercial Operation of each Site's photovoltaic system, Provider shall provide Host with each Financing Party's name, address, telephone, and facsimile numbers.

(c) **Non-Collusion; Termination.** Host and Provider shall not collude to mutually agree to terminate the SPSA or the Agreement without the written consent of all Financing Parties.

(d) **Rights Upon Event of Default.** The Financing Parties, as collateral assignees, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the Agreements in accordance with the terms hereof and only in the event of Provider's or Host's default. The Financing Parties shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreement and the System.

The Financing Parties shall have the right, but not the obligation, to pay all sums due under the Agreements and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreements. Nothing herein requires the Financing Parties to cure any default of Provider under the Agreements or (unless the Financing Parties have succeeded to Provider's interests) to perform any act, duty or obligation of Provider under the Agreements, but Host hereby gives the Financing Parties the option to do so.

Upon the exercise of remedies under the Security Interest, including any sale thereof by any Financing Party, whether by judicial proceeding or under any power of sale contained
therein, or any conveyance from Provider to the Financing Parties (or any assignee of the Financing Parties) in lieu thereof, the Financing Parties shall give notice to Host of the transfer or assignment of the Agreements. Any such exercise of remedies shall not constitute a default hereunder.

Upon any rejection or other termination of the Agreements pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with the Financing Parties or any assignee thereof having the same terms and conditions as the Agreements.

(e) **Right to Cure.**

Host will not exercise any right to terminate or suspend the Agreements unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend the Agreements, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in the Agreements. The Parties' respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default cannot reasonably be cured by any Financing Party within such period and any Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

If the Financing Parties (including any purchaser or transferee), pursuant to an exercise of remedies, shall acquire title to or control of Provider's assets and shall, within the time periods described in Subsection (c)(i) above, cure all defaults under any Agreement existing as of the date of such change in title or control in the manner required by the Agreements and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under such Agreement, and such Agreement shall continue in full force and effect.

***
EXHIBIT C - SOLAR POWER AND SERVICES AGREEMENT

This Solar Power and Services Agreement (this “San Diego County Water Authority Olivenhain Reservoir · SPSA”) is made and entered into as of __ (the “Effective Date”), between Pristine Sun, LLC, a California limited liability company (“Provider”), and the San Diego County Water Authority (“Host”; and, together with Provider, each, a “Party” and together, the “Parties”).

WITNESSETH:

WHEREAS, Host desires that Provider, finance, install and operate and maintain a solar photovoltaic system at the Premises (as hereafter defined), located on the Site (as hereafter defined), for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same; and

WHEREAS, Provider and Host witnessed and acknowledged those certain General Terms and Conditions of Solar Power and Services Agreement dated as of __ (“General Conditions”), which are incorporated by reference as 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:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety.

2. Schedules and Exhibits. The following Schedules and Exhibits are incorporated herein as if set forth herein in their entirety:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 1</td>
<td>System Specifications</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>Estimated Annual Net Revenue</td>
</tr>
<tr>
<td>Schedule 3</td>
<td>Early Termination Fee</td>
</tr>
<tr>
<td>Schedule 4</td>
<td>Estimated Annual Host Site Energy Production</td>
</tr>
<tr>
<td>Schedule 5</td>
<td>Notice Information</td>
</tr>
<tr>
<td>Exhibit 1 of General Terms and Conditions</td>
<td>Site Plan and Location</td>
</tr>
<tr>
<td>Exhibit A of General Terms and Conditions</td>
<td>Site License</td>
</tr>
<tr>
<td>Exhibit B of General Terms and Conditions</td>
<td>Certain Agreements for the Benefit of the Financing Parties</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this SPSA and intending to be legally bound hereby, Provider and Host have executed this SPSA as of the Effective Date set forth above.

PROVIDER: PRISTINE SUN Corporation

By:__________________________

Troy A. Helming
Chief Executive Officer

HOST: SAN DIEGO COUNTY WATER AUTHORITY

By:__________________________

Maureen A. Stapleton
General Manager
EXHIBIT C SCHEDULES
Schedule 1 - Specifications

Solar System Premises: San Diego County Water Authority Olivenhain Reservoir
19086 Via Ambiente, Escondido, CA 92029
Solar System Size: 6 Megawatts (MW)

SCOPE

The Following scope of work supplements the requirements of the Agreement and pertain to design construction and operations and maintenance of the Solar System Size at the Solar System Premises.

I. General

Provider services shall include all requirements for project development and post commercial operations activities including planning, engineering and design, permitting, cost estimating, design reviews, constructability review, construction, construction management, project management, operations and maintenance, warranty and routine inspection, interconnection, regulatory reporting, community outreach meetings, local planning group approvals and scheduling, delivery and sales of energy. Provider shall obtain all permits and environmental approvals required to deliver the System.

II. Design Considerations

a. Provider shall incorporate the following design and construction considerations in providing the System.

b. As a key design consideration, the reservoir may be drained during emergency conditions. As such, Contractor shall design a System that is mostly unaffected by changes in water level and that includes anchors able to withstand a rocky bottom.

c. Ability to withstand a 7.2 magnitude earthquake;

d. Self-regulation of panel angles under varying wind loads;

e. Low physical profile for minimal visual impact and reduction of bird strikes;

f. Construction of materials that are environmentally friendly so as not to negatively affect the water quality of the reservoir.

g. Locate the facilities in an area away from the dam.

h. Construction that includes burying conduits or trenching must meet the requirements of the Host and the California Department of Water Resources, Division of Safety of Dams (if applicable) and may be subject to their review and written approval. Conduit on land shall be below grade where practicable.

i. Design and construct the System to code and in such a manner as to ensure complete electrical safety for persons, equipment, and property during installation and under both normal and abnormal operating conditions for the life of the Project.

j. The quality of the equipment and services supplied by Provider shall be consistent with applicable codes and standards, including but not limited to, those listed below. The most recent approved revision shall apply.

1. National Electrical Code (NEC) – National Fire Protection Association (NFPA) 70

2. Uniform Building Code - UBC

3. All outdoor enclosures shall be minimum National Electrical Manufacturers
Association (NEMA) 3R, or equivalent rating
4. Inverters shall be certified to Underwriters Laboratories (UL) 1741 or equivalent
5. American National Standards Institute (ANSI)/ Institute of Electrical and Electronics Engineers (IEEE) 928 Recommended Criteria for Terrestrial PV Power Systems (PV System Performance Criteria)
6. ANSI/American Society of Civil Engineers (ASCE) 7- Building Code Requirements for Minimum Design Loads in Buildings and Other Structures
7. American Concrete Institute (ACI) 318 with Commentary (ACI 318R) - Building Code Requirements for Reinforced Concrete
8. IEEE 927 Recommended Practice for Utility Interface of PV Systems
9. ANSI/IEEE Std 100, IEEE Standard Dictionary of Electrical and Electronics Terms
10. ANSI/IEEE Std 1262, IEEE Recommended Practice for Qualification of PV Modules
11. ASTM International (ASTM) Std E 892, Standard Tables for Terrestrial Solar Spectral Irradiance at Air Mass 1.5 for 37º Tilted Surface
16. IEEE Std C37.20.2, IEEE Standard for Metal-Clad and Station-Type Cubicle Switchgear
17. IEEE Std C37.20.2b, Supplement to IEEE Standard for Metal-Clad and Station-Type Cubicle Switchgear: Current Transformers Accuracies
19. IEEE Std C57.12.01, IEEE Standard General Requirements for Dry-Type Distribution and Power Transformers Including Those with Solid Cast and/or Resin Encapsulated Windings
20. IEEE Std C57.12.51, IEEE Standard for Ventilated Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase, with High-Voltage 601 V to 34 500 V; Low-Voltage 208Y/120 V to 4160 V- General Requirements
24. Certification of Contractor-Supplied Equipment: All PV modules, inverters and electrical components shall be required to be listed or recognized by an appropriate and recognized United States Safety Laboratory (for example: UL, ETL, etc.).

III. Design Review
Provider shall prepare and allow Host review preliminary design, 50% design, 90% design, and final design plans and specifications. The Host shall approve in writing the final design plans and specifications before Provider may begin construction.
IV. Interconnection
Provider shall provide all materials and equipment necessary to interconnect the Project with San Diego Gas and Electric’s (SDG&E) local transmission and/or distribution system in accordance with California Independent System Operator (CAISO) and SDG&E standards. Identify the delivery point(s) in accordance with these standards. Complete all application, study, and testing procedures necessary to finish the interconnection process. Design and construct the Project so that it may be completely isolated from SDG&E during maintenance and repair.

V. Environmental Approval and Compliance
Provider shall prepare all necessary California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation and permit applications, and obtain all environmental permits and approvals required to construct the System.

VI. Existing Reservoir Information and Operational Constraints
a. Provider shall consider the following information for the sizing and design of the System.

b. The probability is low for completely drawing down the reservoir (assume a maximum probability of once every ten years). In the event that a drawdown is necessary, drawdown would be performed in a controlled manner and would take 30 days to complete.

c. The panels, if not removed, would be landing on a rocky, uneven bottom that may have boulders.

d. In the unlikely/rare event that there was a dam safety emergency due to an earthquake, the first six days would see a rapid drawdown of approximately 13 feet per day (elevation 1078 feet to 997 feet the first 6 days). The anchoring system would need to account for a quick response time within the first week. The drawdown from elevation 997 feet to 840 feet dead storage level is slower at about 7 feet per day and would allow for more time to dismantle and move equipment.

e. Factor in the two drawdown rates and operating constraints during the design of the anchorage system. If the dead storage level of elevation 840 feet is reached, there will be approximately three acres of water surface remaining. If a 20-acre system is proposed, consider that the solar panels would likely need to be dismantled or tethered to avoid damage from the uneven bottom.

VII. Monitoring System
Provider shall develop and provide a monitoring program that will allow Water Authority staff to monitor the performance of the PV system(s) on a historical and real-time basis, for the life of the equipment.

VIII. Warranties
Warranties against defective design, materials, workings, and latent defects for the time period specified below shall be provided, as well as all other warranties required or implied by law. Contractor shall fully define in its proposal the offered warranty which
shall meet the following requirements, at a minimum:

1. Five-year complete system warranty.
2. Ten-year inverter and power transformers warranty.
3. 25-year PV panel operation and degradation warranty.

IX. Existing Conditions and Trenching
Provider shall video the pre-existing conditions before beginning construction and provide to Host. Provider shall repair any damage to the Premises caused by construction of the System. All trenching will be backfilled with slurry and capped with material matching the original surface for all road crossings or parking lots. All other trenching will be compacted to 95%. Provider shall use Water Authority’s White Book as a guide.

X. Internet Service
Account setup and installation of all wiring and hardware for internet service to the System: When the system has been set up by Provider and operational, Provider shall pay the internet service fee.

XI. Miscellaneous Requirements
a. Provider, its employees, and subcontractors shall limit their access and activities to their work area. Provider shall furnish for their use temporary/portable toilets, dumpsters, equipment, phones, office space, and secured storage as needed for work during construction.

b. No excessive construction noise including radios will be allowed. Host shall provide to Provider a specific agreement for construction requirements before the start of construction.
Schedule 2 – Estimated Annual Net Revenue

The annual net revenue sharing with respect to the System under the Agreement shall be 69% Provider and Provider’s tax equity investor (TE)/31% Host, assuming the Host provides the non-cash utility interconnection and third party utility PPA Security in the form of either a letter of credit, escrow account, or an organization/company guaranty and that will result in no cost to the Host; and assuming the tax equity investor monetizes 99% of the tax losses and tax credits, in accordance with the following schedule.

<table>
<thead>
<tr>
<th>Year of System Term</th>
<th>Annual Net Revenue Pristine Sun/TE</th>
<th>Annual Net Revenue Water Authority</th>
<th>Year of System Term</th>
<th>Annual Net Revenue Pristine Sun/TE</th>
<th>Annual Net Revenue Water Authority</th>
</tr>
</thead>
<tbody>
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<td>1</td>
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<td>$97,581</td>
<td>14</td>
<td>$226,027</td>
<td>$96,344</td>
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<td>2</td>
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<td>3</td>
<td>$226,842</td>
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<td>4</td>
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<td>$564,365</td>
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<td>8</td>
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<tr>
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<td>$563,527</td>
<td>$214,145</td>
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<td>$225,799</td>
<td>$96,265</td>
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</tr>
</tbody>
</table>
### Schedule 3—Early Termination Fee

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

<table>
<thead>
<tr>
<th>Early Termination Occurs in Year [of System Term]</th>
<th>Column 1 Early Termination Fee where Host does not take Title to the System ($/Wdc including costs of System removal)</th>
<th>Purchase Date Occurs on the 91st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)</th>
<th>Column 2 Early Termination Fee where Host takes Title to the System ($/Wdc not including costs of System removal)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$5,864,502</td>
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<tr>
<td>2</td>
<td>$6,348,140</td>
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<td>3</td>
<td>$6,379,847</td>
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<td>4</td>
<td>$6,417,965</td>
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<td>5</td>
<td>$6,462,920</td>
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<td>6</td>
<td>$6,510,716</td>
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<td>7</td>
<td>$6,561,551</td>
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<td>10</td>
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<tr>
<td>11</td>
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<td>12</td>
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<tr>
<td>13</td>
<td>$7,638,623</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>$7,648,490</td>
<td>15th Anniversary</td>
<td>$8,075,303</td>
</tr>
<tr>
<td>15</td>
<td>$7,658,544</td>
<td>16th Anniversary</td>
<td>$8,046,326</td>
</tr>
<tr>
<td>16</td>
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<td>17th Anniversary</td>
<td>$8,015,809</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>17</td>
<td>$7,679,249</td>
<td>18th Anniversary</td>
<td>$7,983,684</td>
</tr>
<tr>
<td>18</td>
<td>$7,689,920</td>
<td>19th Anniversary</td>
<td>$7,494,986</td>
</tr>
<tr>
<td>19</td>
<td>$7,700,818</td>
<td>20th Anniversary</td>
<td>$6,985,163</td>
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<tr>
<td>20</td>
<td>$7,257,056</td>
<td>21st Anniversary</td>
<td>$6,453,315</td>
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<tr>
<td>21</td>
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<td>22nd Anniversary</td>
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<td>23rd Anniversary</td>
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<td>23</td>
<td></td>
<td>24th Anniversary</td>
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<tr>
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<td>25th Anniversary</td>
<td>$4,123,083</td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

**Purchase Date refers to the Purchase Date as defined in the General Terms and Conditions of Solar Power and Services Agreement. Any purchase of the System by the Host must comply with Section 2.4 of the General Terms and Conditions of Solar Power and Services Agreement.
Schedule 4 - Estimated Annual Host Site Energy Production

Estimated Annual Host Site Energy Production commencing on the Commercial Operation Date with respect to each System under the Agreement shall be as follows:

<table>
<thead>
<tr>
<th>Year of System Term</th>
<th>Estimated Production (kWh)</th>
<th>Year of System Term</th>
<th>Estimated Production (kWh)</th>
</tr>
</thead>
<tbody>
<tr>
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<td>13,476,196</td>
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The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System under standard conditions at the Premises assuming a non-moving fixed tilt orientation.
Schedule 5 - Notice Information

Host:

San Diego County Water Authority
Attn: Andrea Altmann
4677 Overland Avenue
San Diego, CA 92123
Telephone: (858) 522-6870
Facsimile: (858) 522-6568

Provider:

Pristine Sun Corporation
548 Mission Street, Suite 13000
San Francisco, CA 94104
Telephone: (415) 848-8100
Email: gosolar@pristinesun.com

With a copy to
Pristine Sun Corporation
Attn: General Counsel
970 West Broadway, Suite E-393
Jackson Hole, WY 83002

Financing Parties:
Enter name and address (TBD)

With a copy to:
EXHIBIT D

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of the Commercial Operation is delivered by [independent engineer] ("Engineer") to the San Diego County Water Authority ("Host") in accordance with the terms of that certain Solar Power and Services Agreement dated __________ ("Agreement") by and between San Diego County Water Authority and Pristine Sun Corporation. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate at least ninety-five percent (95%) of the Applicable Contract Capacity of the System has been erected in accordance with the equipment manufacturer’s specifications ("Initial Mechanical Completion");

2. The electrical collection system related to the System comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the System;

3. The substation for the System is substantially complete (subject to completion of punch-list items) and capable of delivering the System Energy;

4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and

5. The System is operational and interconnected with the CAISO grid, has been approved by the CAISO to commence operations, and is capable of delivering System Energy through the permanent interconnection facilities for the System.

For purposes of Section 4 above, "Initial Commissioning Completion" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer’s specifications.

EXECUTED by [INDEPENDENT ENGINEER]
this ________ day of ____________, 20__.  

[INDEPENDENT ENGINEER]

By: __________________________
Its: __________________________
Date: _________________________
EXHIBIT F

MILESTONE SCHEDULE

Key Milestones are designated with a *

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Key Dates in 2017

Congress is taking its first weeklong recess of the year for the President’s Day holiday. Following the recess, the Senate will return to President Trump’s Cabinet nominations and the full Congress will proceed with work toward repealing or reforming the Affordable Care Act (“Obamacare”). Appropriators will also begin finalizing funding for FY2017 and begin preparing FY2018 spending bills. Tax committees will also begin considering a range of tax reform proposals which will, in turn, influence the direction of a larger infrastructure package to be unveiled during the Spring or Summer.

February 28 – President Trump addresses a joint session of Congress and is expected to roll out broad themes of his budget request
March 14 – targeted release date of the President’s budget; he is expected to first release a “skinny budget” with a detailed release expected in late April or May
March 15 – expiration of the nation’s debt ceiling limitation. The Treasury can utilize “extraordinary measures” to extend borrowing until July or possibly September, but a congressional vote is needed this year to continue borrowing
April 28 – expiration of the current Continuing Resolution (CR) funding most government programs
September 30 – end of Fiscal Year 2017 and deadline for approving funding for Fiscal Year 2018 or passing a new CR to continue existing funding

Contentious Confirmation Process Rolls On

Unable to defeat President Trump’s Cabinet nominees, Senate Democrats have instead worked to prolong every confirmation vote. By the end of February, most Cabinet positions should be filled, but the hundreds of key positions will remain vacant for weeks or months.
The Senate confirmed Scott Pruitt as Administrator of EPA on a 52-46 vote. Two Democrats up for tough reelection fights in 2018, Joe Manchin (WV) and Heidi Heitkamp (ND), voted for Pruitt. Republican Susan Collins (ME) voted against him and John McCain (AZ) did not vote. Following the President’s Day recess, Interior-nominee Rep. Ryan Zinke will receive a vote. Confirmation hearings for Supreme Court-nominee Neil Gorsuch will begin March 20. Judiciary Committee ranking member, Dianne Feinstein will play a prominent role during the hearings and during the floor vote.

**Trump Embraces Executive Orders to Set New Course**

President Trump has launched an aggressive use of executive orders to cancel Obama-era policies and to fulfill promises made during the campaign. However, most of these orders remain in need of clarification or further guidance. With Scott Pruitt now in place at EPA, an executive order on the Waters of the United States rule is expected at any time.

*Regulatory Freeze:* The President has frozen work on all agency regulatory work pending a review by his Cabinet and advisors. He also ordered a 60-day delay in the effective date of any final rule published before he took office but that had not yet become effective. This delay will give him time to withdraw rules or allow Congress to use the Congressional Review Act (CRA) to nullify the rule.

*Environmental Streamlining:* A new order allows the Chairman of the White House Council on Environmental Quality (CEQ) to designate infrastructure projects as “high priority” and then pursue expedited procedures to complete environmental rules and permit approvals for these projects. Unlike policies under Presidents Bush and Obama, Trump’s order does not create a multi-member work group or task force in charge, but puts the head of CEQ in charge.

How CEQ will enforce expedited reviews or how CEQ will go about choosing projects to designate remain unknown. Despite various lists that have been published in the press, and received much attention, there are – as yet – no projects being reviewed under expedited procedures apart from the Keystone and Dakota Access Pipelines cited in other orders. Also, agencies have not yet been briefed on how to carry out the new order.

*Sanctuary Cities:* Trump issued an order to withhold federal funding from so-called “sanctuary cities,” but additional guidance from both the Department of Justice and Office of Management & Budget will be needed to gauge the practical effect of this order, although additional orders are likely. Targeted jurisdictions, including many in California, may be able to use prior judicial rulings to thwart Trump on some of his planned penalties, but it is probable the Administration will be able to legally withhold funding in numerous ways from these cities.

*Federal Hiring:* Trump issued an order to freeze hiring new federal employees. He included an exemption for certain national security positions, but the TSA and other agencies have petitioned the White House for exemptions and clarification on filling vacancies versus adding employees. EPA and other environmental-oriented agencies are already suffering from a critical number of vacancies; the hiring freeze, while normal for a
new Administration, will only exacerbate the backlog of permit reviews and other work at these agencies.

**Regulatory Rollback:** Another order states, “whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.” A critical change in rulemaking is included in the second part of the order, as it requires the total incremental cost of new regulations to be fully offset by the elimination of existing costs associated with prior regulations being repealed. This will undoubtedly lead to significant changes in existing regulations.

Rumors abound of other executive orders that would require greater domestic content for federal procurement, higher standards to qualify for waivers from Buy America laws, and new requirements on proof of citizenship to perform work with federal funds. No such orders have been made public, but are expected in coming weeks.

**Work on Infrastructure Plan Begins**

Touted as an area that could be an early win for bipartisan cooperation with the White House, a large infrastructure investment package now appears that it will come later in the year. According to congressional staff, the House will likely take the lead in assembling a package for consideration this summer.

While the President appears to be focused on “big and bold” projects, Congress is looking more at how much funding and financing support might be available, how to channel this investment across the nation, and existing programs that might be utilized to address the infrastructure deficit. Some Members have called for a return to “earmarking,” but there still appears to be resistance to such a move by congressional leaders.

The House Committee on Transportation & Infrastructure kicked off the congressional effort with a hearing on infrastructure needs in the 21st Century. Most of the hearing focused on highways and airports, but future hearings will address specific transportation and flood risk reduction-related needs. Other committees will look at energy, water, broadband, and other needs.

Much of the discussion during the House hearing was on reconciling the lack of funding currently available with large funding needs. An initial hearing in the Senate’s Environment & Public Works Committee focused on the difficulty of meeting infrastructure needs solely through privatization and tax inducements, as has been favored by President Trump. Critically, rural state Republicans – led by EPW Chairman John Barrasso (R-WY) – have pointed out how poorly their states might fare without direct spending.

While not discussed within these hearings, congressional Democrats have released a $1 trillion infrastructure plan for transportation, water quality, education, alternative energy, and other investment. While their plan does not have any path to enactment, it does lay out their priorities for funding and could shape a final deal between Congress and the White House later in the year.
As Congress begins to consider how to improve the nation’s infrastructure, numerous individual bills are being introduced to target specific needs, both for funding and for regulatory relief.

**Congress Deploys CRA**

Since its inception in 1996, the Congressional Review Act (CRA) had been used once to repeal a federal rule. That streak of inactivity is now over. The House has brought up several rules under the CRA and has more planned every week. The Senate passed the first of these – addressing the effect of coal mining on watersheds – soon thereafter and will approve more on an almost weekly schedule. Under the CRA, motions to nullify rules are privileged business, meaning they cannot be filibustered, and may be passed with a simple majority vote.

**Efforts Underway to Support Municipal Bond Tax Exemption**

While congressional supporters were able to turn back repeated efforts by President Obama to eliminate or scale back the tax exemption for municipal bonds, the likelihood of broad tax reform this year keeps the threat alive. The U.S. Treasury estimates the current exemption will cost the federal government $420 billion in lost revenue between 2017-2026. President Trump has spoken in favor of “muni bonds,” but they remain an attractive target to offset other tax cuts or spending increases.

In response to this challenge, the bipartisan Congressional Municipal Finance Caucus has reconstituted itself and the U.S. Conference of Mayors has started a new effort to shore up support in Congress for the program. Other supporters of infrastructure investment have pointed out the important role muni bonds have played in supporting investment at a time of declining federal support for a broad range of needed infrastructure construction and maintenance.

**Senate Committee Holds Hearing on the Endangered Species Act**

The Senate Committee on Environment and Public Works held a hearing on the “modernization” of the Endangered Species Act (ESA). Chairman John Barrasso (R-WY) stated that this would be the first in a series to explore options to reform the ESA and it is his desire to find a bipartisan consensus. Senator Tom Carper (D-DE) was dubious of the effort and stated that he was ready to work with Republicans so long as the effort would “do nothing to compromise the ESA, only strengthen.”

Barrasso highlighted efforts by the Western Governors Association to identify consensus-based solutions to modernize statutes, regulations, and policies, to allow the Endangered Species Act work for all stakeholders. However, witnesses testifying before the committee did not offer any positions that would seem to form a consensus among the wide array of ESA stakeholders. A congressional infrastructure package expected to move later this year could provide a vehicle to address ESA, but at the risk of losing Democratic votes.
February 22, 2017

Attention: Imported Water Committee

Metropolitan Water District Delegates’ Report (Discussion)

Background
This report summarizes key discussions held and actions taken at the Metropolitan Water District (MWD) committee and Board meetings, as reported by the Water Authority Delegates. This report includes MWD Board activities for February 2017. The MWD committees and Board met on February 13 and 14, and meet next on March 13 and 14.

Discussion
Key actions at the February MWD Board and committee meetings included: 1) biannual approval and authorization of the distribution of Appendix A in connection with the future issuance and remarketing on MWD bonds; and 2) authorization of a lease of two MWD owned Delta Islands to Semitropic Water Storage District (Semitropic). The Board received an update on the Delta Islands purchase; Attachment 1 is a summary of this update. The Board also received reports on the treatment charge workgroup and water treatment plants’ operating capacities (summarized in Attachment 2). Additionally, the Board received an update on MWD’s Foundational Action Funding Program. The Water Authority Delegates objected to how MWD administers this program since it excludes the Water Authority’s member agencies from participating in it by requiring participants to sign agreement language similar to MWD’s Rate Structure Integrity clause.¹

Throughout various MWD committee meetings, MWD staff provided updates on Oroville Dam. During MWD’s Board meeting, General Manager Kightlinger responded to a newspaper article that called into question MWD’s role in thwarting the emergency spillway from being concrete-lined (to prevent erosion).² After reporting on the current reservoir operations, Kightlinger said he “talked to the press” about reports that were “inaccurate” and “unfortunate.” He stated that MWD “did opine” that some downstream and recreation improvements were expensive. However, related to lining the emergency spillway, MWD “said that decision needs to be made by the Army Corps of Engineers in conjunction with [Department of Water Resources] and we had no opinion on that.” Continuing, Kightlinger said that MWD pays for water supply benefits at Oroville and “flood control benefits are not Metropolitan’s obligation or the other State Water Project contractors’, so we did not take a position on that because those do become public benefits that become funded elsewhere.”

Authorization Property Lease
The Real Property and Asset Management Committee, and subsequently the Board, authorized entering into a new agreement to lease two of MWD’s Delta Islands, Webb Tract and Bouldin Island, to Semitropic. The Delegates opposed entering into this lease. Prior to the committee

meeting, Water Authority General Counsel Hattam expressed concern that MWD is exceeding the statutory exception limits for matters it may discuss in closed session.³

**Approve and Authorize Appendix A**

In June 2016, MWD changed its procedure for Board review of its Appendix A, so that rather than the Board reviewing Appendix A each time MWD plans to use it in connection with a bond sale or remarketing, the review is on a biannual basis.⁴ The Delegates, who have expressed concerns with the information MWD provides in Appendix A, opposed the change in the Board’s review procedures because it limited the Board’s ability to review, ask questions about, and provide comments on MWD’s Appendix A (as is required by law).⁵ Ultimately, MWD moved forward with the new procedure and this month staff presented a draft Appendix A for Board authorization to “support offering statements for financings through the next biannual update” over the next six months. The Delegates wrote three letters to MWD: 1) requesting information related to MWD’s forecasted water sales; 2) reiterating that request and renewing their objection to the procedural change; and 3) detailing their specific concerns with MWD’s draft Appendix A.⁶ Responding partially to the Delegates’ first letter, Chief Financial Officer Breaux reported at the Finance Insurance Committee meeting that for disclosure purposes, MWD will be reducing its “sales” projections⁷ to 1.57 million acre-feet (MAF) and 1.5 MAF in fiscal years 2017 and 2018, respectively. For comparison, MWD’s adopted biennial budget plans for 1.7 MAF of “sales”⁸ while MWD’ February 2017 Water Surplus and Demand Management Report projects “sales” ranging from 1.3 MAF to 1.4 MAF for calendar year 2017.

**Overview**

Overall, the Water Authority Delegation supported eight of the 10 action items approved by the MWD Board in February. In closed session, the Board conferenced with labor negotiators and as a separate item, approved entering into a 2017-2021 Memorandum of Understanding with the Management and Professional Employees’ Association, Local 1001 (one of MWD’s three labor unions). Attachment 3 is a copy of MWD’s February 2017 committee and Board meeting agendas and summary report.

Prepared by: Liz Mendelson-Goossens, Water Resources Specialist

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⁶ The Delegates letters on MWD’s Appendix A found here:
⁷ MWD’s “sales” forecasts included MWD’s wheeling of the Water Authority’s separate QSA supplies.
⁸ Breaux reported that MWD will make up the revenue shortfall caused by lower than budgeted water sales by drawing on MWD’s Water Rate Stabilization Fund.
Reviewed by:  
- Communications and Legislation Committee by Keith Lewinger and Elsa Saxod  
- Engineering and Operations Committee by Fern Steiner  
- Finance and Insurance Committee by Keith Lewinger and Elsa Saxod  
- Legal and Claims Committee by Fern Steiner  
- Organization, Personnel and Technology Committee by Michael Hogan  
- Real Property and Asset Management Committee by Michael Hogan  
- Water Planning and Stewardship Committee by Keith Lewinger and Fern Steiner  

Attachment 1: Discussion Summary of Delta Islands  
Attachment 2: Discussion Summary of Treatment Plant Operating Capacities and Treatment Charge Workgroup  
Attachment 3: MWD’s committee and Board meeting agendas and Board summary, dated February 13 and 14, 2017
Discussion Summary of Delta Islands

During MWD’s February 2017 Real Property and Asset Management (RP&AM) Committee meeting, the Board received an update on the five Delta Islands that MWD purchased in 2016. Before this presentation, General Manager Kightlinger responded to Director Lewinger’s prior inquiry to understand how MWD’s purchase of the islands without appraisals comports with its Administrative Code. Kightlinger said that there are “two methodologies by which the Board can authorize purchases of property:” 1) appraisals and 2) evaluations. Indicating that the Board authorized the islands’ purchase through evaluations, Kightlinger added that MWD is “not doing a post-purchase appraisal” but “an analysis of lease value and things like that through an appraisal process but we’re not doing the full appraisal of the property because that’s not required.”

Lewinger sought clarification that evaluations are not appraisals; Kightlinger described evaluations as “a different process” than appraisals by which “valuations done through basically comparables.” Kightlinger confirmed that the Board was shown comparables and not appraisals.

During its update on the islands, MWD staff described each of the islands (four of which are below sea level), including their relationship to the California WaterFix tunnel alignment and emergency freshwater pathway. Staff described the parties involved in managing the islands (MWD, reclamation districts, and farmers), and the islands current tenants, the key terms of their leases, and their activities on the islands. MWD is engaged in efforts to assess, monitor, maintain, and improve levees; inventorying assets on the islands; and exploring possible uses of the properties including “water quality investigations” and ecosystem restoration opportunities. In addition to utilizing existing staff, MWD reported it has hired additional staff to support the islands’ management. Through December 2016, MWD has spent more than $178 million on the islands, including their purchase price and professional services, staff time and travel, and other expenses related to their purchase and management. MWD staff promised to provide “progress updates” every three or four months.

Following staff’s presentation, Director Hogan requested a “full accounting” of the costs of the properties, including expenses incurred from owning and managing the islands. Kightlinger responded affirmatively and said staff will provide a “projected budget” for the fiscal year. Noting that MWD has “been critical of the state” for owning islands and farming them, Director Peterson (Las Virgenes) asked about MWD’s plans to use the islands for environmental restoration. Kightlinger replied that during the next committee item (a closed session item related to leasing two of MWD’s islands), MWD will discuss lease provisions and indicated MWD is taking a “short-term approach.” Peterson expressed “hope” that “they’ll be flexible,” to which Kightlinger replied “that’s what we tried to preserve.” In response to Peterson’s request for a “rough sketch of what” MWD is planning for restoration, Kightlinger indicated staff would provide this (but did not specify when).

1 At MWD’s November 2016 RP&AM meeting, in response to Lewinger’s question about MWD completing an “independent appraisal” of the islands prior to purchasing them, Real Property Group Manager Shraibati said MWD is “initiating those appraisals now” and planned to bring “a full report on all Bay-Delta activities with Real Property in February [2017].”

2 However, Kightlinger previously stated that MWD had conducted an appraisal; at MWD’s May 2016 RP&AM meeting, he said “we’ve had an appraisal to show we’re buying it at the low end of the fair market value, so we can always sell it, dispose of this asset and use it for other purposes as we see fit.”
Dove-tailing onto Peterson’s questions, Lewinger asked when staff will present “concrete options” for the islands use. Kightlinger said MWD provided potential uses to the Board during its consideration of purchasing the islands, and currently MWD is “exploring” potential purposes for the islands, but also “waiting” for decisions related to WaterFix to be made. Kightlinger indicated “concrete ideas and suggestions” may be presented by the end of 2017.

In response to Lewinger’s questions related to MWD’s liability in levee failure, MWD legal counsel replied that the current lease agreements have indemnity clauses protecting MWD and that MWD is not responsible for fixing failed levees (that responsibility falls to the islands’ reclamation districts, but MWD reported that it has staff monitoring levee performance). In response to Director Lefevre’s (Torrance) questions about MWD’s involvement in the freshwater pathway, staff said MWD has been meeting with the Department of Water Resources and the Army Corps of Engineers to “shore-up” both the pathway and materials over the past 10 years, but now as an island owner, MWD can assess the levees and “see how to fix them.” (During its presentation, staff reported that some of islands experienced “boils,” on which MWD expended resources monitoring and repairing).

Wrapping up the Board’s discussion, Chairman Record (Eastern) described his involvement with the islands purchase as “really active” and indicated he has discussed options for the islands’ use with a variety of stakeholders. Record agreed with Kightlinger that “WaterFix is going to play a big role” and MWD is waiting for decisions related to the project. Describing himself as “really excited” about MWD’s ownership of the islands, Record said he would remain engaged in their management.
Discussion Summary of Treatment Plant Operating Capacities and Treatment Charge Workgroup

During MWD’s February 2017 Finance and Insurance (F&I) Committee meeting, the Board received an update on the Treatment Charge Workgroup (Workgroup) and its recommendations related to a fixed treatment charge. This recommendation included policy principles, a fixed treatment charge, and fixed charge’s implementation. MWD stated that the Workgroup’s fixed charge proposal would recover 16 percent of MWD’s treatment costs – those reportedly related to providing treatment plant peaking, or capacity, service – through a charge based on member agencies’ proportional share of maximum peak day treated water purchases made during May through September over a rolling three-year period. This charge would be implemented no sooner than 2021. Through its participation in the Workgroup, the Water Authority provided suggestions on the proposed policy principles, which added that cost recovery be in accordance with industry standards and California Law, and that a new treatment charge be undertaken in concert with a full cost of service study of MWD’s rates in 2018. The Water Authority’s suggestions were not incorporated by the Workgroup.

Following staff’s presentation on the Workgroup’s recommendation, the committee was addressed by Calleguas Municipal Water District General Manager Mulligan. Mulligan described the Workgroup’s proposal as a “compromise” and “a modest step towards better aligning rates with cost causation.” Calling the proposal “too modest,” Director Wunderlich (Beverly Hills) said it failed to consider MWD’s previous investments in treatment capacity. Director McKenney (Municipal Water District of Orange County) agreed with Wunderlich that the Workgroup proposal was “not being aggressive enough,” but said he is “prepared to support” the proposal because “it’s a step in the right direction” and it was unlikely the Board would “reach agreement on anything better.” Agreeing that charge was a move forward, Director Blois (Calleguas) asked about the Water Authority’s suggestion that MWD complete a cost of service study. Chief Financial Officer Breaux indicated the Workgroup’s proposed charge is based on MWD’s existing cost of service study and that MWD completes a cost of service study during its biennial budget and rate-setting process.¹

In response to Director Lewinger, staff said the 16 percent corresponds with the costs to provide treatment peaking service. Lewinger reflected that MWD’s April 2016 recommendation was to recover more than 16 percent of MWD’s treatment costs through a fixed charge. Breaux explained the Workgroup thought the fixed charge should be based on “something we actually use year-in, year-out” and dropped recovering standby treatment costs.

Switching gears, Director Dake (Los Angeles) suggested that MWD focus on reducing its treatment costs rather than implementing a fixed treatment charge. He noted MWD’s previously mentioned option to “mothball” portions of treatment plants that are operating below capacity. To minimize costs, General Manager Kightlinger said MWD is endeavoring to ensure treatment plants are “right-sized” and “run as efficiently as possible.”

¹ MWD does not complete a cost of service study during each biennial budget and rate setting process, but relies on its existing, flawed cost of service study to provide updated cost of service reports.
Dake also requested more information on how the Workgroup’s proposed charge would impact agencies that roll onto MWD when they experience a short-term supply loss, suggesting that the charge may encourage agencies to develop their own treated water facilities and “go off” MWD. Kightlinger disagreed that the Workgroup proposed charge would “drive people to roll off” MWD. If the charge were implemented, Breaux said agencies that roll onto MWD’s treated water system during the summer months would be assessed the fixed treatment charge over a rolling three-year period. He added that the Workgroup’s proposal includes a “delayed implementation” of the fixed charge, offering agencies “time to try to manage their demands during the summer months” and the opportunity to shift their reliance to “other times of the year,” which he noted may not reduce their overall MWD treated water demands. Later, in response to Dake, McKenney surmised agencies may peak “unexpectedly” onto MWD when they already decided to roll-off MWD, but “then something happened” and MWD is able to back-up this supply loss. According to McKenney, this charge would capture the costs associated with MWD providing such an “insurance benefit.” F&I Committee Chair Barbre (Municipal Water District of Orange County) agreed with McKenney and echoed Wunderlich that the Workgroup’s recommendation does not “go far enough.” Indicating hesitancy to support the Workgroup’s recommended charge, Dake requested that when the item returns for Board action, that staff present an option that breaks-out approving the Workgroup’s recommended charge from its proposed policy principles.

Director Paskett (Los Angeles) reflected the fixed treatment charge is being considered in a “silo” and suggested that it be considered in “the context of a larger rate restructuring or evaluation of the rates” to enhance MWD’s “financial resiliency.” Breaux said there is not “a risk” to MWD’s financial resiliency since it would recover its treatment costs with or without the charge. However, Breaux agreed there would be “fluctuation” in demands that MWD would “handle” using its reserves, describing the Workgroup’s recommended charge as “a small step in better fiscal stability.” Paskett questioned why MWD would not consider a larger rate “restructuring discussion.” Breaux said the Workgroup’s recommended charge “can be easily accommodated in our current structure”;2 and later, Kightlinger said that MWD is in the middle of litigation over its rates and that “down the road” MWD will “review our rate structure.”

Focusing on the Workgroup’s recommendation, Paskett questioned the use of peak-day demand from May through September to set the charge and the charge’s allocation methodology, which she described as selecting “winners and losers.” Breaux replied that the Workgroup utilized “what was available to them” and examined which costs are fixed and how to appropriately allocate them to peaking or standby. Echoing Breaux, Kightlinger said that “the allocation was just a result of the policy to try and capture more fixed charges, and the whole concept behind it was to reduce volatility, reduce fluctuations in charges.” Mulligan added that the May through September timeframe was selected because that is what MWD’s existing capacity charge is based on, and that the Workgroup focused on “the best policy action” and didn’t “discuss” winners and losers. Later, Director Peterson (Las Virgenes) commented that MWD already has “winners and losers” and expressed support for the Workgroup’s recommended charge since it would help recover the costs associated with MWD providing treated water service “insurance.” Paskett completed her comments by stating that the recommendation was “not something I feel comfortable supporting.”

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2 From the get go, the scope of the Workgroup was limited by MWD; the Workgroup’s facilitator, Chesnutt, reported in November 2016 that the Workgroup’s scope would be limited to a “sandbox” focused on “the distribution of costs to the rate elements,” and not “redoing a treatment revenue requirement” or “choosing a different method to allocate costs.”
In contrast, Director Atwater (Foothill) called the Workgroup’s recommended charge a “step in the right direction” because when the Board last considered a treated water fixed charge it could not get majority support but now “all but one member agency supports” the Workgroup’s proposed charge. After voicing concern that MWD would not “take another step” to reduce the potential of “additional stranded assets” and that the charge was not “aggressive” enough, Wunderlich reluctantly expressed support for the proposal.

As the Board’s discussion wound down, Kightlinger suggested that MWD not provide a “chart” trying to predict “winner and losers” as requested by Paskett and Director Kurtz (Pasadena), but that each member agency utilize its staff to analyze how the Workgroup’s recommended charge is expected to impact them. He said staff would return with more information including a better explanation of the costs identified as peaking (as Lewinger requested). In response to Lewinger, Breau agreed to provide more details on the “rationale” for basing the charge on peak-day treated water demand during May through September. However, staff did not indicate if it would accommodate Wunderlich’s request to provide “the pros and cons” of the April 2016 and Workgroup’s recommendations. Barbre said the committee would receive another report on the charge at its March meeting and then decide if “it becomes an action item for April.”

Later that day, the Engineering and Operations (E&O) Committee received an oral presentation on the “review of water treatment plant operating capacities.” This presentation focused on MWD’s efforts to evaluate the demands on its five treatment plants to manage stranded treatment capacity and identify opportunities to reduce treatment costs. Staff reported that demands for treated water have declined in general since 2008 and that previously, MWD took steps to reduce excess treatment capacity at Mills in the late-1990s, decreasing its capacity by almost 33 percent from 326 million gallons per day (MGD) to 220 MGD. Following the expansion of Skinner’s treatment capacity in 2008, demands on the plant have declined due to “conservation efforts” and increased “local treatment plant capacity” resulting from the Twin Oaks Valley Water Treatment Plant and Lewis Carlsbad Desalination Plant. Since 2013 and 2014 demands on the Jensen plant have declined, which MWD attributed to conservation and “limited State Water Project supplies.” MWD reported that the Skinner and Jensen plants are currently operating at 28 percent and 25 percent, respectively, of their capacities. Based on MWD’s evaluation of projected treated water demand, staff recommended downsizing Skinner (from 630 MGD to 350 MGD). At the Jensen plant, staff reported that it is continuing to assess the “feasibility of removing treatment modules and associated equipment from service.”

Replying to Director Faessel (Anaheim), staff said that in order to achieve the costs savings associated with downsizing Skinner ($19 million over 30 years) MWD would need to completely decommission Skinner modules 4, 5, and 6. In response to Lewinger and Steiner, Man indicated MWD would not seek Board authorization to proceed with the downsizing of Skinner and that it would begin coordinating with member and state agencies to mothball modules 4, 5, and 6. Contrary to E&O Committee Chair Peterson’s supposition, staff said it would not return to the Board to authorize funding for the downsizing. Barbre said reducing Skinner’s capacity is a Board decision since it relates to MWD’s operations and policy. In contrast, Kightlinger called the downsizing an “operational issue that is my job to decide,” but agreed to bring the item forward for the Board’s consideration. Peterson ended the committee’s discussion by saying the Board will consider reducing Skinner’s capacity at the March E&O Committee meeting.
Finance and Insurance Committee

Meeting with Board of Directors*

February 13, 2017

9:30 a.m. -- Room 2-145

* The Metropolitan Water District’s Finance and Insurance Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Finance and Insurance Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Finance and Insurance Committee will not vote on matters before the Finance and Insurance Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Finance and Insurance Committee held January 9, 2017

3. CONSENT CALENDAR ITEMS — ACTION

   None

4. OTHER BOARD ITEMS — ACTION

   8-1 Adopt CEQA determination and approve and authorize the distribution of Appendix A for use in the issuance and remarketing of Metropolitan’s bonds. (F&I)
Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

a. Approve the draft of Appendix A attached to the board letter;

b. Authorize the General Manager, or other designee of the Ad Hoc Committee, to finalize Appendix A, with changes approved by the General Manager and General Counsel; and

c. Authorize distribution of Appendix A, substantially in the form of the draft Appendix A attached to the board letter and as finalized by the General Manager, or other designee of the Ad Hoc Committee, in connection with the sale or remarketing of bonds.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS


7. MANAGEMENT REPORT

a. Chief Financial Officer’s report

8. TREATMENT CHARGE WORKSHOP

a. Report on Treatment Charge Workgroup Recommendations [To be mailed separately]

9. FOLLOW-UP ITEMS

None
10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

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Water Planning and Stewardship Committee
Meeting with Board of Directors*

February 13, 2017

11:00 a.m. – Room 2-456

MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

* The Metropolitan Water District’s Water Planning and Stewardship Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Water Planning and Stewardship Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Water Planning and Stewardship Committee will not vote on matters before the Water Planning and Stewardship Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Water Planning and Stewardship Committee held January 9, 2017

3. CONSENT CALENDAR ITEMS — ACTION

None

4. OTHER BOARD ITEMS — ACTION

WITHDRAWN 8-2

Adopt CEQA determination and authorize a five-year agreement with Electric Gas Industries Association to administer Metropolitan’s Regional Conservation Rebate Program, the Water Savings Incentive Program, and the On-site Retrofit Program in an amount not to exceed $420,000,000. (WP&S) [To be mailed separately]
5. BOARD INFORMATION ITEMS

9-1 Update on the renewal of contract for the annual audit of State Water Project charges. (WP&S)

6. COMMITTEE ITEMS

a. Oral report on Foundational Action Funding Program
b. Conservation Program Update
c. Oral report on Water Surplus and Drought Management Plan

7. MANAGEMENT REPORTS

a. Bay-Delta Matters
b. Colorado River Matters
c. Water Resource Management Manager's report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

REVISED: Date of Notice: February 7, 2017
10. ADJOURNMENT

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**Engineering and Operations Committee**

Meeting with Board of Directors*

**February 13, 2017**

1:00 p.m.  -- Room 2-145

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**MWD Headquarters Building**

700 N. Alameda Street

Los Angeles, CA 90012

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* The Metropolitan Water District’s Engineering and Operations Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Engineering and Operations Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Engineering and Operations Committee will not vote on matters before the Engineering and Operations Committee.

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1. **Opportunity for members of the public to address the committee on matters within the committee's jurisdiction** (As required by Gov. Code Section 54954.3(a))

2. **Approval of the Minutes of the meeting of the Engineering and Operations Committee held January 9, 2017**

3. **CONSENT CALENDAR ITEMS — ACTION**

   **7-1**
   
   Adopt CEQA determination and appropriate $1.79 million; and award $1,109,254 contract to Kaveh Engineering & Construction, Inc. to repair expansion joints at the Colorado River Aqueduct pumping plants (Appropriation No. 15483). (E&O)
Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and

a. Appropriate $1.79 million; and
b. Award $1,109,254 contract to Kaveh Engineering & Construction, Inc. to repair expansion joints on the pump delivery lines at the Colorado River Aqueduct pumping plants.

4. OTHER BOARD ITEMS — ACTION

None

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Review of Water Treatment Plant Operating Capacities
b. Control System Improvement Program
c. Capital Investment Plan quarterly report for period ending December 2016

7. MANAGEMENT REPORTS

a. Water System Operations Manager’s report
b. Engineering Services Manager’s report
8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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Communications and Legislation Committee

Meeting with Board of Directors*

February 13, 2017

2:00 p.m. -- Room 2-456

MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

* The Metropolitan Water District’s Communications and Legislation Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Communications and Legislation Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Communications and Legislation Committee will not vote on matters before the Communications and Legislation Committee.

1. Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Communications and Legislation Committee held January 9, 2017

3. CONSENT CALENDAR ITEMS — ACTION

None

4. OTHER BOARD ITEMS — ACTION

None

Date of Notice: January 18, 2017
5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Presentation on “Metropolitan's Attitudes and Awareness Survey” by Tom Patras, EMC Research

b. Report on activities from Washington, D.C.

c. Report on activities from Sacramento

7. MANAGEMENT REPORT

a. External Affairs Management report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT
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REVISED AGENDA

Legal and Claims Committee
Meeting with Board of Directors*

February 14, 2017

9:00 a.m. -- Room 2-145

<table>
<thead>
<tr>
<th>Meeting Schedule</th>
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<tr>
<td>9:00 a.m.</td>
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<td>Board Meeting</td>
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MWD Headquarters Building  •  700 N. Alameda Street  •  Los Angeles, CA 90012

* The Metropolitan Water District’s Legal and Claims Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Legal and Claims Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Legal and Claims Committee will not vote on matters before the Legal and Claims Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Legal and Claims Committee held January 10, 2017

3. MANAGEMENT REPORTS
   a. General Counsel’s report of monthly activities

4. CONSENT CALENDAR ITEMS — ACTION

   7-3 Adopt CEQA determination and authorize increase in maximum amount payable under contract with Western Energy & Water for legal services by $150,000 to an amount not to exceed $250,000; and report on legal activities related to the future management and operation of Metropolitan’s CRA power and transmission resources. (L&C)

REVISED: Date of Notice: February 8, 2017
ADDED

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Counsel to amend the agreement with Western Energy & Water to increase by $150,000 the maximum amount payable under the contract to a total of $250,000 in order to assist Metropolitan with legal services.

5. OTHER BOARD ITEMS — ACTION

8-3 Adopt CEQA determination and receive report on In re Holy Hill Community Church, U.S. Bankruptcy Court Case No. 2:15-ap-01467-WB (Bankr. C.D. Cal. 2015); authorize increase in the maximum amount payable under contract with Lesnick, Prince & Pappas, LLP for special counsel services by $200,000 to a maximum amount of $300,000; and authorize settlement. (L&C)

[Conference with legal counsel – discussion concerning existing litigation; may be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1) and (d)(2)]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize amendment of the contract with Lesnick, Prince & Pappas, LLP for legal services by $200,000 for a total amount not to exceed $300,000.

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS
a. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004 and CPF-16-515282; and the appeal of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901 and A148266. (L&C) 
[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

b. L&C Committee Briefing: Overview of the State Water Project

c. General Counsel Evaluation Progress Check
[Evaluation of the performance of the General Counsel may be heard in closed session pursuant to Gov. Code Section 54957]

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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REVISED: Date of Notice: February 8, 2017
MWD Headquarters Building  •  700 N. Alameda Street  •  Los Angeles, CA 90012

REVISION 2

Real Property and Asset Management Committee
Meeting with Board of Directors*

February 14, 2017

10:00 a.m.  --  Room 2-456

* The Metropolitan Water District’s Real Property and Asset Management Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Real Property and Asset Management Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Real Property and Asset Management Committee will not vote on matters before the Real Property and Asset Management Committee.

1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meeting of the Real Property and Asset Management Committee held December 13, 2016

3. CONSENT CALENDAR ITEMS – ACTION

7-2 Adopt CEQA determination and authorize a long-term ground lease to New Cingular Wireless, PCS, LLC at Lake Mathews, County of Riverside. (RP&AM)

ADDED

Recommendation:

Option #1:

Adopt the CEQA determination to review and consider the information provided in the 2016 EA and adopt the Lead Agency’s findings related to the proposed action, and

Authorize the long-term ground lease to New Cingular Wireless, PCS, LLC.
4. OTHER BOARD ITEMS – ACTION

ADDED 8-5

Adopt CEQA determination and authorize entering into an agreement to lease Metropolitan property to the Semitropic Water Storage District. (RP&AM)

[Conference with real property negotiators; agency negotiators: Lilly L. Shraibati and Bryan Otake; negotiating party: Semitropic Water Storage District; for portions of certain real property known as Webb Tract, located in Contra Costa County, California, and identified as Contra Costa County Assessor’s Parcel Nos. 026-060-003, 026-060-007, 026-060-008, 026-060-015, 026-060-016, 026-060-017, 026-060-018, 026-060-019, 026-070-001, 026-070-006, 026-070-010, 026-070-011, 026-070-012, 026-070-013, 026-080-004, 026-080-005, 026-080-006, 026-080-007, 026-080-008, 026-080-009, and for portions of certain real property known as Bouldin Island, located in San Joaquin County, California, and identified as San Joaquin County Assessor’s Parcel Nos. 069-030-35, 069-030-36, 069-030-37, 069-030-38, 069-030-39; 069-100-01, and 069-100-02; under negotiation: price and terms of payment; to be heard in closed session pursuant to Gov. Code Section 54956.8]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project, is categorically exempt, and is not subject to CEQA and

Authorize staff to enter into a new lease agreement with Semitropic Water Storage District according to the price and terms recommended in the board letter and in a form approved by the General Counsel.

REVISION 2: Date of Notice: February 9, 2017
5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

a. Update on Delta Islands

7. MANAGEMENT REPORT

a. Real Property Management Manager's Report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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REVISION 2: Date of Notice: February 9, 2017
REVISED AGENDA
Organization, Personnel and Technology Committee
Meeting with Board of Directors*

February 14, 2017

11:00 a.m. -- Room 2-145

Tuesday, February 14, 2017
Meeting Schedule

<table>
<thead>
<tr>
<th>Time</th>
<th>Location</th>
<th>Group</th>
</tr>
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<tbody>
<tr>
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1. Opportunity for members of the public to address the committee on matters within the committee’s jurisdiction (As required by Gov. Code Section 54954.3(a))

2. Approval of the Minutes of the meetings of the Organization, Personnel and Technology Committee held August 16, 2016 and December 13, 2016

3. CONSENT CALENDAR ITEMS – ACTION
   None

REVISED: Date of Notice: February 8, 2017
4. OTHER BOARD ITEMS – ACTION

ADDED 8-4

Adopt CEQA determination and approve entering into 2017-2021 Memorandum of Understanding between The Metropolitan Water District of Southern California and the Management and Professional Employees' Association, Local 1001. (OP&T)

[Conference with Labor Negotiators; to be heard in closed session pursuant to Gov. Code Section 54957.6. Agency representative: Stephen Lem, Manager of Labor Relations and EEO Investigations Section. Employee organizations: the Management and Professional Employees Association MAPA/AFSCME Local 1001]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to exercise discretion under Administrative Code Section 6101(k) to enter into a successor MOU with MAPA.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

UPDATED a. Update on Conference with Labor Negotiators.

[Conference with Labor Negotiators; to be heard in closed session pursuant to Gov. Code Section 54957.6. Agency representative: Stephen Lem, Manager of Labor Relations and EEO Investigations Section. Employee organizations: The Employees Association of The Metropolitan Water District of Southern California/AFSCME Local 1902 Chapter 1001, the Management and Professional Employees Association MAPA/AFSCME Chapter Local 1001, the Association of Confidential Employees, and The Supervisors Association]

7. MANAGEMENT REPORT

a. Human Resources Manager’s report
8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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1. Call to Order

   (a) Invocation: Eric Freeman, Team Manager VII Engineering Services Group

   (b) Pledge of Allegiance: Director Atwater

2. Roll Call

3. Determination of a Quorum

4. Opportunity for members of the public to address the Board on matters within the Board’s jurisdiction. (As required by Gov. Code § 54954.3(a)

5. OTHER MATTERS

   A. Approval of the Minutes of the Meeting for January 10, 2017. (A copy has been mailed to each Director)
      Any additions, corrections, or omissions

   B. Report on Directors’ events attended at Metropolitan expense for month of January
C. Induction of new Director Zareh Sinanyan, from the City of Glendale
   (a) Receive credentials
   (b) Report on credentials by General Counsel
   (c) File credentials
   (d) Administer Oath of Office
   (e) File Oath

D. Induction of new Director Phillip D. Hawkins, from Central Basin Municipal Water District
   (a) Receive credentials
   (b) Report on credentials by General Counsel
   (c) File credentials
   (d) Administer Oath of Office
   (e) File Oath

E. Induction of new Director Pedro Aceituno, from Central Basin Municipal Water District
   (a) Receive credentials
   (b) Report on credentials by General Counsel
   (c) File credentials
   (d) Administer Oath of Office
   (e) File Oath

F. Reappointment of Director Mark Gold from City of Los Angeles
   (a) Receive credentials
   (b) Report on credentials by General Counsel
   (c) File credentials
   (d) Administer Oath of Office
   (e) File Oath

G. Reappointment of Director Jesús E. Quiñonez from City of Los Angeles
   (a) Receive credentials
   (b) Report on credentials by General Counsel
   (c) File credentials
   (d) Administer Oath of Office
   (e) File Oath

H. Approve Commendatory Resolutions for Directors Michael Touhey, representing Upper San Gabriel Valley Municipal Water District, Leticia Vasquez Wilson and Robert Apodaca, representing Central Basin Municipal Water District

I. Approve committee assignments

J. Chairman’s Monthly Activity Report

REVISION 2: Date of Notice: February 9, 2017
6. DEPARTMENT HEADS' REPORTS

A. General Manager's summary of Metropolitan's activities for the month of January

B. General Counsel's summary of Legal Department activities for the month of January

C. General Auditor's summary of activities for the month of January

D. Ethics Officer's summary of activities for the month of January

7. CONSENT CALENDAR ITEMS — ACTION

7-1 Adopt CEQA determination and appropriate $1.79 million; and award $1,109,254 contract to Kaveh Engineering & Construction, Inc. to repair expansion joints at the Colorado River Aqueduct pumping plants (Appropriation No. 15483). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is categorically exempt, and

a. Appropriate $1.79 million; and

b. Award $1,109,254 contract to Kaveh Engineering & Construction, Inc. to repair expansion joints on the pump delivery lines at the Colorado River Aqueduct pumping plants.

7-2 Adopt CEQA determination and authorize a long-term ground lease to New Cingular Wireless, PCS, LLC at Lake Mathews, County of Riverside. (RP&AM)

ADDED Recommendation:

Option #1:

Adopt the CEQA determination to review and consider the information provided in the 2016 EA and adopt the Lead Agency's findings related to the proposed action, and

Authorize the long-term ground lease to New Cingular Wireless, PCS, LLC.
7-3  Adopt CEQA determination and authorize increase in maximum amount payable under contract with Western Energy & Water for legal services by $150,000 to an amount not to exceed $250,000; and report on legal activities related to the future management and operation of Metropolitan’s CRA power and transmission resources. (L&C) [To be mailed separately]

ADDED

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Counsel to amend the agreement with Western Energy & Water to increase by $150,000 the maximum amount payable under the contract to a total of $250,000 in order to assist Metropolitan with legal services.

(END OF CONSENT CALENDAR)

8.  OTHER BOARD ITEMS — ACTION

8-1  Adopt CEQA determination and approve and authorize the distribution of Appendix A for use in the issuance and remarketing of Metropolitan's bonds. (F&I)

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

a.  Approve the draft of Appendix A attached to the board letter;

b.  Authorize the General Manager, or other designee of the Ad Hoc Committee, to finalize Appendix A, with changes approved by the General Manager and General Counsel; and

c.  Authorize distribution of Appendix A, substantially in the form of the draft Appendix A attached to the board letter and as finalized by the General Manager, or other designee of the Ad Hoc Committee, in connection with the sale or remarketing of bonds.
WITHDRAWN 8-2

Adopt CEQA determination and authorize a five-year agreement with Electric Gas Industries Association to administer Metropolitan’s Regional Conservation Rebate Program, the Water Savings Incentive Program, and the On-site Retrofit Program in an amount not to exceed $420,000,000. (WP&S) [To be mailed separately]

8-3

Adopt CEQA determination and receive report on In re Holy Hill Community Church, U.S. Bankruptcy Court Case No. 2:15-ap-01467-WB (Bankr. C.D. Cal. 2015); authorize increase in the maximum amount payable under contract with Lesnick, Prince & Pappas, LLP for special counsel services by $200,000 to a maximum amount of $300,000; and authorize settlement. (L&C)

[Conference with legal counsel – discussion concerning existing litigation; may be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1) and (d)(2)]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize amendment of the contract with Lesnick, Prince & Pappas, LLP for legal services by $200,000 for a total amount not to exceed $300,000.

ADDED 8-4

Adopt CEQA determination and approve entering into 2017-2021 Memorandum of Understanding between The Metropolitan Water District of Southern California and the Management and Professional Employees’ Association, Local 1001. (OP&T)

[Conference with Labor Negotiators; to be heard in closed session pursuant to Gov. Code Section 54957.6. Agency representative: Stephen Lem, Manager of Labor Relations and EEO Investigations Section. Employee organizations: the Management and Professional Employees Association MAPA/AFSCME Local 1001]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to exercise discretion under Administrative Code Section 6101(k) to enter into a successor MOU with MAPA.
ADDED 8-5  

Adopt CEQA determination and authorize entering into an agreement to lease Metropolitan property to the Semitropic Water Storage District.  
(RP&AM)  
[Conference with real property negotiators; agency negotiators: Lilly L. Shraibati and Bryan Otake; negotiating party: Semitropic Water Storage District; for portions of certain real property known as Webb Tract, located in Contra Costa County, California, and identified as Contra Costa County Assessor’s Parcel Nos. 026-060-003, 026-060-007, 026-060-008, 026-060-015, 026-060-016, 026-060-017, 026-060-018, 026-060-019, 026-070-001, 026-070-006, 026-070-010, 026-070-011, 026-070-012, 026-070-013, 026-080-004, 026-080-005, 026-080-006, 026-080-007, 026-080-008, 026-080-009, and for portions of certain real property known as Bouldin Island, located in San Joaquin County, California, and identified as San Joaquin County Assessor’s Parcel Nos. 069-030-35, 069-030-36, 069-030-37, 069-030-38, 069-030-39; 069-100-01, and 069-100-02; under negotiation: price and terms of payment; to be heard in closed session pursuant to Gov. Code Section 54956.8]  

 Recommendation:  

Option #1:  

Adopt the CEQA determination that the proposed action is not defined as a project, is categorically exempt, and is not subject to CEQA and  

Authorize staff to enter into a new lease agreement with Semitropic Water Storage District according to the price and terms recommended in the board letter and in a form approved by the General Counsel.

9. BOARD INFORMATION ITEMS  

9-1  Update on the renewal of contract for the annual audit of State Water Project charges. (WP&S)
10. OTHER MATTERS (Contd.)

10-1 General Manager Evaluation Progress Check
[Evaluation of the performance of the General Manager may be heard in closed session pursuant to Gov. Code Section 54957].

10-2 General Auditor Evaluation Progress Check
[Evaluation of the performance of the General Auditor may be heard in closed session pursuant to Gov. Code Section 54957].

10-3 Ethics Officer Evaluation Progress Check
[Evaluation of the performance of the Ethics Officer may be heard in closed session pursuant to Gov. Code Section 54957].

11. FUTURE AGENDA ITEMS

12. ADJOURNMENT

NOTE: At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parentheses at the end of the description of the agenda item e.g., (E&O, F&I). Committee agendas may be obtained from the Board Executive Secretary.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan’s Headquarters Building and on Metropolitan’s Web site http://www.mwdh2o.com.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.
Summary Report for
The Metropolitan Water District of Southern California
Board Meeting
February 14, 2017

INDUCTION OF NEW DIRECTORS

Zareh Sinanyan was inducted to the Board representing the City of Glendale. Phillip D. Hawkins was inducted to the Board representing Central Basin Municipal Water District. Pedro Aceituno was inducted to the Board representing Central Basin Municipal Water District. (Agenda Items 5C, 5D, 5E)

REAPPOINTMENT OF DIRECTORS

Mark Gold’s reappointment was deferred to March. Jesús E. Quiñonez was reappointed to the Board representing the City of Los Angeles. (Agenda Items 5F and 5G)

COMMITTEE ASSIGNMENTS

Director Treviño was assigned to the Real Property and Asset Management Committee and the Organization, Personnel and Technology Committee. (Agenda Item 5I)

FINANCE AND INSURANCE COMMITTEE

Adopted the CEQA determination and approved the draft of Appendix A attached to the board letter; authorized the General Manager, or other designee of the Ad Hoc Committee, to finalize Appendix A, with changes approved by the General Manager and General Counsel; and authorized distribution of Appendix A, substantially in the form of the attached draft Appendix A and as finalized by the General Manager, or other designee of the Ad Hoc Committee, in connection with the sale or remarketing of bonds. (Agenda Item 8-1)

WATER PLANNING AND STEWARDSHIP COMMITTEE

The item to authorize a five-year agreement with Electric Gas Industries Association to administer Metropolitan’s Regional Conservation Rebate Program, the Water Savings Incentive program, and the On-site Retrofit Program in an amount not to exceed $420,000,000, was withdrawn. (Agenda Item 8-2 – WITHDRAWN)

LEGAL AND CLAIMS COMMITTEE

Adopted CEQA determination and received report on In re Holy Hill Community Church, U.S. Bankruptcy Court Case No. 2:15-ap-01467-WB (Bankr. C.D. Cal. 2015); and authorized increase in the maximum amount payable under contract with Lesnick, Prince & Pappas, LLP for special counsel services by $200,000 to a maximum amount of $300,000. (Agenda Item 8-3 no closed session held)
ORGANIZATION, PERSONNEL AND TECHNOLOGY COMMITTEE

Adopted the CEQA determination and authorized the General Manager to exercise discretion under Administrative Code Section 6101(k) to enter into a successor MOU with MAPA.
(Agenda Item 8-4 no closed session held)

REAL PROPERTY AND ASSET MANAGEMENT COMMITTEE

Adopt the CEQA determination and authorized staff to enter into a new lease agreement with Semitropic Water Storage District according to the price and terms recommended in the board letter and in a form approved by the General Counsel.
(Agenda Item 8-5 no closed session held)

CONSENT CALENDAR

In other action, the Board:

Adopted the CEQA determination and appropriated $1.79 million; and awarded $1,109,254 contract to Kaveh Engineering & Construction, Inc. to repair expansion joints on the pump delivery lines at the Colorado River Aqueduct pumping plants. (Approp. No. 15483) (Agenda Item 7-1)

Adopted the CEQA determination to review and consider the information provided in the 2016 EA and adopted the Lead Agency's findings related to the proposed action, and authorized the long-term ground lease to New Cingular Wireless, PCS, LLC. (Agenda Item 7-2)

Adopted the CEQA determination and authorized the General Counsel to amend the agreement with Western Energy & Water to increase by $150,000 the maximum amount payable under the contract to a total of $250,000 in order to assist Metropolitan with legal services. (Agenda Item 7-3)

OTHER MATTERS:

In other action, the Board:

Approved Commendatory Resolutions for Directors Michael Touhey, representing Upper San Gabriel Municipal Water District; Leticia Vasquez Wilson and Robert Apodaca, representing Central Basin Municipal Water District. (Agenda Item 5H)

Evaluation of the performance of the General Manager.
(Agenda Item 10-1 heard in closed session)

(Agenda Item 10-2 heard in closed session)

Evaluation of the performance of the Ethics Officer.
(Agenda Item 10-3 heard in closed session)
THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.

Board letters related to the items in this summary are generally posted in the Board Letter Archive approximately one week after the board meeting. In order to view them and their attachments, please copy and paste the following into your browser:
http://edmsidm.mwdh2o.com/idmweb/home.asp.
February 22, 2017

**Attention: Imported Water Committee**

**Colorado River Board Representative’s report. (Discussion)**

**Purpose**
The Colorado River Board (CRB) Representative’s report summarizes monthly activities of the Colorado River Board of California.

**Discussion**
This report covers activities from the February 8, 2017 CRB meeting in Palm Springs, California. The Coachella Valley Water District (CVWD) hosted a tour of its Whitewater River Groundwater Recharge Facility following the CRB meeting.

**Agency Updates**
CRB agencies provided updates, including:
- **California Department of Water Resources (DWR)** – DWR stated that California is currently experiencing record wet conditions in the Northern Sierra region.
- **MWD** – MWD stated that they have shifted operation of their distribution system to accommodate the increased State Water Project allocation this year.
- **Los Angeles Department of Water and Power (LADWP)** – LADWP reported that the record snowpack in the Eastern Sierra region will fill the Los Angeles Aqueduct this year and meet all the city’s demands, as well as fill all their storage capacity and have approximately 165,000 acre-feet of additional supplies. LADWP is discussing options with MWD for a potential agreement for the extra water.
- **Water Authority** – At its January meeting, the Water Authority board of directors declared an end to the drought in the San Diego region.
- **Palo Verde Irrigation District (PVID)** – PVID completed their maintenance work on their diversion dam.
- **Imperial Irrigation District (IID)** – IID’s board of directors approved a large reservoir project as part of its plan to shift operations from fallowing to on-farm and system conservation.

**Negotiations of Minute 32X**
Discussions among the Basin States and federal agencies regarding development of Minute 32X are expected to continue in 2017, but the positions of the new federal Administration are unclear. Similar to the DCP, Arizona state legislature would need to take action to authorize the domestic implementation agreements that would support Minute 32X. The existing Minute 319 expires at the end of 2017.

**Drought Contingency Planning**
Discussions have continued on the development of a Drought Contingency Plan (DCP) and recently included representation from the Upper Basin states. The Upper Basin is working on its
own ideas for a DCP. Within Arizona, action by the state legislature is needed to authorize new agreements which has not occurred. In California, development of implementing agreements among Colorado River section 5 contractors is underway. A Secretarial Order issued on January 18 outlines the background of the DCP and provides a plan for moving forward.

**Colorado River Basin Water Report**

The Upper Basin experienced significant precipitation in January with many areas receiving 200 to 300 percent of average for the month. Reservoir and hydrologic conditions as of the February 13, 2017 Bureau of Reclamation Weekly Water Supply Report are shown in Table 1.

<table>
<thead>
<tr>
<th>Conditions as of February 13, 2017</th>
<th>Volume (million acre-feet)</th>
<th>Percent of Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total System Storage</td>
<td>29.5</td>
<td>49%</td>
</tr>
<tr>
<td>Lake Powell</td>
<td>11.2</td>
<td>46%</td>
</tr>
<tr>
<td>Lake Mead</td>
<td>10.6</td>
<td>41%</td>
</tr>
<tr>
<td>Upper Colorado River Snowpack</td>
<td></td>
<td>159% of average</td>
</tr>
<tr>
<td>Water Year 2017 Precipitation</td>
<td></td>
<td>139% of average</td>
</tr>
</tbody>
</table>

**Glen Canyon Dam Adaptive Management Program**

Preliminary data from the 2016 Fall High Flow Experiment (HFE) shows that 9 out of 14 sandbars show an increase in size since the HFE. The main population of native humpback chub skipped spawning for the third year in a row. Invasive green sunfish were not detected in recent surveys, however predatory brown trout have increased dramatically. These species will be monitored due to concerns about potential impacts on native fish populations.

**Special Presentation**

CVWD special counsel provided an update on two ongoing Colorado River tribal water court cases: *Navajo vs U.S. Department of Interior* and *Agua Caliente Band of Cahuilla Indians vs CVWD/Desert Water Agency*.

**Announcements**

Tanya Trujillo, Executive Director of the CRB, announced her resignation from the position due to family relocation.

**Groundwater Recharge Tour**

The tour showcased the facilities where CVWD exchanges its State Water Project allocation for Colorado River water with the Metropolitan Water District of Southern California and takes delivery off the Colorado River Aqueduct at the Whitewater River. CVWD conveys this water in the Whitewater River channel then diverts it into a series of groundwater recharge ponds where it seeps into the groundwater aquifer for use as local municipal supplies.

Prepared by: Kara Mathews, Senior Water Resources Specialist
Reviewed by: Doug Wilson, CRB Representative

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1 These hydrologic conditions are updated from those reviewed at the CRB meeting.