



# City of Palo Alto

## City Council Staff Report

(ID # 6535)

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**Report Type: Consent Calendar**

**Meeting Date: 1/25/2016**

**Summary Title: Lease Agreement with Komuna Energy**

**Title: Approve and Authorize the City Manager or His Designee to Execute a 25-year Lease Agreement with Annual Lease Payments of \$20,000 between the City and Komuna Palo Alto LLC Covering Four City-Owned Parking Structures for: (1) Construction and Operation of Solar Photovoltaic Systems, with the Potential to be a Palo Alto Clean Local Energy Accessible Now (CLEAN) Program Participant; and (2) Installation of City-Owned Electric Vehicle Chargers and Infrastructure.**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council:

- Approve and Authorize the City Manager or his designee to execute a 25-year Lease Agreement (Attachment A) between the City of Palo Alto and Komuna Palo Alto LLC (Komuna) with an annual lease payment of \$20,000 covering portions of four city-owned parking structures located at 445 Bryant Street, 520 Webster Street, 475 Cambridge Avenue and 275 Cambridge Avenue in order for Komuna to: (1) Construct and operate solar photovoltaic (PV) systems, with the potential to be a Palo Alto CLEAN Program applicant; and (2) install City-owned Electric Vehicle (EV) Chargers and infrastructure; and
- Delegate authority to the City Manager or his designee to execute on behalf of the City, any documents that are ministerial in nature or are otherwise necessary to administer the Lease Agreement that are consistent with the Palo Alto Municipal Code and City Council approved policies.

## **Background**

On March 25, 2014, the Public Works Department issued a Request for Proposals (RFP) for the installation and operation of solar PV facilities at one or more of the five city-owned parking structures. These solar PV facilities will provide local solar electric power generation that will be purchased by the City and contribute to its renewable portfolio needs. In addition, the RFP was structured to solicit proposals from vendors that would be eligible for participation in the Council-approved Palo Alto CLEAN Program.

The Palo Alto CLEAN program offers payment for the electricity generated from Palo Alto solar PV installations where the electricity is not used on site, but is sold to City of Palo Alto Utilities (CPAU) under the Palo Alto CLEAN Program Power Purchase Agreement (CLEAN PPA). The CLEAN PPA establishes a fixed price per unit of electricity delivered to the Palo Alto electric grid over a 20- or 25-year term.

The current CLEAN Program rate is 16.5¢/kWh over the term of the CLEAN PPA. In May 2015, Council considered recommendations from the Finance Committee (Staff Report 5849) to reduce the CLEAN Program price for solar resources (from 16.5¢/kWh to 10.3¢/kWh or 10.4 ¢/kWh, depending on contract term length). Council was informed that such a reduction could have implications for this project. On May 27, 2015, Council voted, amongst other things, to continue the CLEAN program for solar at the cost of 16.5 ¢/kWh for 3 MW as previously approved by the Council; and to direct lease income on City owned garages from the CLEAN program to Utilities to offset costs of the program to electric ratepayers ([Staff report 5849](#); [Action Minutes](#)). One important consideration in Council's decision to maintain the contract rate of \$0.165/kWh for solar resources, rather than reducing it to the avoided cost level as the Finance Committee advocated, was the expectation that the Public Works Department would soon be executing the Lease Agreement now being presented to Council for Komuna to develop a group of solar facilities (totaling about 1.3 MW of capacity) atop several downtown parking garages that would participate in the CLEAN program.

Staff from Community Services, Planning and Community Environment, Public Works, Utilities and Administrative Services Real Estate Division worked to review

city-owned sites for their suitability for PV installation based on solar access, property access, future redevelopment plans and historical status. Staff concluded the parking garages have good potential for one of the first Palo Alto CLEAN projects on city-owned sites. The solar installations would provide shade to the top floor of each garage. The non-profit organization, Clean Coalition, was engaged to draft an RFP to solicit proposals for installing PV systems on the city-owned garages.

The five City-owned parking structures listed below were originally included in the RFP to be considered for the PV installation:

- Lot R – 528 High Street
- Lot S/L – 445 Bryant Street
- Cowper/Webster – 520 Webster Street
- Cambridge – 475 Cambridge Avenue
- Ted Thompson – 275 Cambridge Avenue

The RFP requested proposals to install PV systems at up to five of the city-owned parking structures and an option to propose the installation of EV chargers at each location as well.

On June 3, 2014, three proposals were received from Pristine Sun, THINKnrg (now Komuna) and AltaM Energy. Proposals were reviewed by staff from Public Works, ASD and Utilities Departments as well as consultants from Clean Coalition. The proposals were evaluated by quantitative and qualitative factors including PV system design and aesthetics, PV system output and the financial terms of the lease agreement. All three companies were interviewed and Pristine Sun was unanimously selected based on their substantial lease payment, strong project team and history with PV projects. The other two proposals included a significantly reduced lease payment. Negotiations began with Pristine Sun in early 2015. However, City and Pristine Sun were unable to structure an agreement. The City ceased negotiations with Pristine Sun and ultimately rejected the vendor's proposal in June 2015 ([Staff Report 5876](#)).

## **Discussion**

In July 2015, staff began negotiations with Komuna (formally THINKnrg). Komuna was rated second in the RFP responses, mainly due to the reduced rent payment

compared to the first proposer. The City was able to negotiate a higher rent payment than previously proposed with a 25-year, rather than 20-year, PPA term and solar installations on only four of the five parking garage rooftops. No PV systems will be installed at Lot R parking garage located at 528 High Street due to the high cost to develop that particular parking structure. Once the Lease is approved, Komuna will have site control, which is required in order to submit an application for the CLEAN Program. At that point, Komuna will apply to the CLEAN Program to process a PPA. The estimated design size of the generating facility is 1.3 MW, or 43 percent of the CLEAN program capacity. The final system size is contingent upon approval of Building Permit/Plan Check review.

Summary of Key Lease Terms

|                                |   |
|--------------------------------|---|
| Lease Term                     | 25 years, no option to extend   |
| Solar Project Size             | 1.3 MW, approximately 43% of the CLEAN Program’s capacity   |
| Location                       | 4 (rather than the original 5) City Garages located in downtown Palo Alto and near California Avenue  |
| Rental Payments                | \$20,000 annually for all four garages, \$5,000 per garage. No payment escalator  |
| Buyout Option                  | Available at years 10, 15, 20 and 25 for fair market value  |
| Security                       | <ul style="list-style-type: none"> <li>• \$25,000 in more conventional security deposit that can be used for failure to pay rent, clean property; and</li> <li>• Completion assurance (e.g. bond, letter of credit) at estimated cost of construction, that City is authorized to draw on to guarantee performance of all covenants and conditions.</li> </ul>  |
| Parking Impacts and Mitigation | <ul style="list-style-type: none"> <li>• Komuna starts paying rent at when the construction commences, continuing through operational period. If construction is delayed, in addition, liquidated damages apply on a lump sum basis, per garage and range from \$632-\$1,820 per garage, per day.</li> <li>• Komuna compensates City for permanent loss of parking – which cannot exceed two spaces lost per garage – at the City’s in lieu fee in effect at the time.</li> </ul> |
| EV Chargers                    | <ul style="list-style-type: none"> <li>• City to own, operate; prevailing wage requirement included</li> </ul>  |

|            |  |
|------------|--|
|            | <ul style="list-style-type: none"> <li>• Developer to construct six total EV chargers (3 dual head chargers) in three garages; install wiring for additional twenty chargers (ten dual head chargers) in all four garages</li> </ul> |
| Next Steps | If Lease Agreement approved, Komuna will have site control and be eligible to apply for CLEAN Program  |

Lease Payments and Electric Vehicle Chargers

The Lease Agreement includes a total annual payment of \$20,000 for the four parking garages, or \$5,000 per garage.

Based on the City Council’s direction, the lease income will be directed to the Utilities Electric Fund to offset the cost of the CLEAN program. ([Staff report 5849](#); [Action Minutes](#)) This will reduce the amount by which the CLEAN program rate exceeds the current avoided cost of solar electricity. The current CLEAN program rate is 16.5 ¢/kWh. Successful applicants to the CLEAN Program secure this higher rate for the term of their project, even if Council later reduces the rate. The avoided cost of solar electricity, which is falling, is discussed in more detail in Staff Report 5849.

Although the lease terms include lower rent than was discussed during negotiations with the first proposer, the Lease requires installation of 18 new Level 2 EV chargers (3 dual head chargers in three garages) and electrical infrastructure to support an additional 80 future new Level 2 chargers (ten dual head in all four garages). These chargers will be owned, operated and maintained by the City.

The EV chargers and infrastructure, as well as the generating facilities, provide value and notable benefits to the City, beyond rental revenue alone. It is difficult to lease or use the area above the top floor in a parking garage. Here, lease of the parking garages enables the City to use that area for which it would otherwise not have a use, while simultaneously improving upon them in several ways. The solar array provides shade amenities to the top level of the parking garages, which benefit the parking district. In addition, there is community value associated with having more EV chargers and installation of infrastructure for even more in the future available in the City. Though use of EV chargers is currently free, the Policy and Services Committee is expected to soon consider options for changing the

City's current policy of free use of EV chargers. Changes to EV charging policy may result in additional revenues to the City related to the Lease. In addition, the Lease is consistent with the City's policy goals of developing local solar generation facilities.

#### Buyout and System Ownership

Komuna would install and maintain the generating facilities for a term beginning with the Lease execution and ending twenty-five years after commencement of commercial operation of all the generating facilities. At the end of the twenty-five year term, Komuna is required to remove the generating facilities and restore the parking structure to the original condition. Komuna is required to post a \$25K security deposit which covers failure to pay rent, to repair damages caused by Komuna's acts or omissions, or expenses to clean the property upon end of the term. In addition, Komuna must post security based on the estimated cost of construction or \$3.05 per watt. The City can draw on this completion assurance to guarantee Komuna's full performance of all Lease obligations.

The City has the option to buy-out one or more of the generating facilities at the 10, 15, 20 or 25 year anniversary date. If the City exercises the buy-out option, the City will pay Komuna the fair market value of the generating facility or facilities as determined by a third party appraiser.

#### Public Purpose Taking, Property Transfer and Default

The City has the right to take any or all of the properties for any public purpose at any time during the term of the Lease. If the City takes a property for any public purpose, the City can choose between finding an alternative City-owned site which has substantially similar insolation and access to the grid as the existing property or paying a termination payment (Termination Payment). If the City finds a new site, the City will pay for the reasonable costs of removal and reinstallation, and will reimburse Komuna for any production revenues lost in excess of ten days. If the City does not locate an alternate site, the amount of the Termination Payment owed is set forth as a specific lump sum amount in Schedule 23.2 of Attachment A. The Termination Payment is different for each generating facility and decreases each year over the term. Schedule 23.2 of Attachment A describes the Termination Payment in detail, which is generally near \$1MM for an individual facility in year 1 and decreases to between \$45K to \$81K in year 25.

The City also has the ability to transfer any or all of the properties at any time during the term. If the City is no longer the lessor on the property, the City would pay Komuna the Termination Payment, unless the new lessor has reasonably acceptable credit or the City provides reasonably acceptable credit support.

The Lease also provides that if the City defaults under the Lease, then the City will pay a Termination Payment to Komuna. For a default to occur, the City would need to undergo a bankruptcy-type event or to materially breach a material term of the Lease after a 30-day cure period. An administrative or operational error or omission is not an event of default.

If the Lease terminates and the City pays Komuna a Termination Payment, Komuna's CLEAN PPA for that parking facility will also terminate.

#### Construction Phasing/Loss of Parking

The Lease Agreement estimates that it will take six weeks to construct the generating facility. Construction of the generating facilities may require Komuna to temporarily restrict access to all, or portions of the parking garages' top floors during that time; however, the Lease Agreement anticipates that the parties will work together to mutually agree upon a construction schedule for the generating facilities. As part of that process the City will look to phase construction if necessary and mitigate potential parking impacts for instance, by constructing the facilities consecutively so that only one downtown and California Avenue garage may be under construction concurrently. Note that Komuna starts paying rent when generating facility construction commences, and continues to do so through the operational period. The lease does not charge Komuna a separate fee for the parking structure closure during the six-week construction period above and beyond those rent payments.

In addition to working with Komuna to establish a mutually agreeable construction schedule, the Lease imposes penalties in the form of liquidated damages on Komuna if construction (and any related parking closures) extends beyond the initial six week construction estimate. If construction is delayed, Komuna must pay a penalty. After the six-week period, liquidated damages will be assessed at a fixed daily rate per garage calculated based on the number of impacted parking spaces multiplied by the maximum daily parking rate for each

garage. This liquidated damages amount ranges from \$632.00 per day for the 475 Cambridge Garage to \$1820.00 per day for the Bryant Garage, and is described in a table in the Lease.

While Komuna anticipates no permanent loss of parking from the generating facility's support infrastructure, the Lease Agreement allows for a maximum of two parking spaces to be permanently lost for each garage. In this instance, Komuna would pay parking elimination fees in the amount of parking in-lieu fee, which is currently \$65,475 per space. In addition, Komuna will pay for parking not on the top floor at the then-posted daily parking rate.

### Design/Planning Review

According to terms and conditions of the Lease Agreement, Komuna is responsible for obtaining all approvals and permits as part of the planning entitlement and building permit process. In discussions with Planning staff it is anticipated that the solar installations will require architectural review. The one percent for art requirement was discussed during RFP development and staff determined the requirement did not apply to this project as it is electrical equipment on top of a building.

### **Resource Impact**

The PV facilities will be installed and maintained at Komuna's expense. If the City owed a Termination Payment as the result of a public purpose taking or a sale or transfer of property to another entity, it is anticipated that payment of the Termination Payment would be a negotiated part of the underlying transaction. However, if that was not accomplished or in the case of a City default, a Termination Payment could be a General Fund expense.

Komuna also intends to apply to the Palo Alto CLEAN program and expects to meet all requirements of that program and secure the existing CLEAN Program Rate of \$0.165 kWh fixed over the 25-year term. No additional city funding will be used for this project. The annual \$20,000 lease payment will be directed to the Utilities Electric Fund per Council direction. Additionally, Council consideration of the current policy on fees for EV charging may result in additional revenues.

### **Policy Implications**



Entering into a new lease agreement is consistent with policies and programs in the Comprehensive Plan promoting smart energy development and City and private sector collaboration for effective development of alternative clean and sustainable energy programs.

### **Environmental Review**

Approval of the Lease Agreement does not require review under the California Environmental Quality Act: (1) for the solar PV facilities, because section 21080.35 of the California Public Resources Code specifies that CEQA does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot; and (2) for the installation of EV Chargers, which is categorically exempt pursuant to CEQA Guidelines section 15303 (construction and location of limited numbers of new, small facilities and structures) and CEQA Guidelines section 15301 (existing facilities).

#### **Attachments:**

- Attachment A - Komuna Lease Agreement (PDF)
- Komuna Lease Agreement & Exhibits FINAL 1.14.2016 (PDF)

**LEASE AGREEMENT  
BETWEEN THE  
CITY OF PALO ALTO  
AND  
KOMUNA PALO ALTO LLC**

This lease agreement ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City" or "Lessor") and Komuna Palo Alto LLC, a Delaware limited liability company ("Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, City is the owner of four (4), multi-level parking facilities in Palo Alto, California, two (2) of which are near downtown Palo Alto and two (2) of which are near California Avenue; and

WHEREAS, City desires to lease a portion of each of the four (4) parking facilities to Lessee for the purpose of installing, constructing, operating and maintaining a solar powered electric generating project to be owned, maintained and operated by Lessee for the Term of this Lease; and

WHEREAS, City also desires and Lessee also has agreed to install three (3) electric vehicle chargers capable of charging six vehicles in each of three (3) of the four (4) parking facilities, and to install wire, conduit, switchgear and any electrical capacity upgrades necessary to support an additional ten (10) electric vehicle chargers capable of charging upon full installation twenty (20) vehicles in each of the four (4) parking facilities, which upon installation will be owned, maintained and operated by City; and

WHEREAS, Lessee desires to lease portions of the parking facilities from City in order to install, construct, maintain and operate such solar powered electric generating project, and to gain the necessary access to install such electric vehicle chargers, conduit and switchgear; and

WHEREAS, the leasehold rights granted to Lessee by the City in this Lease combine Ground Floor Area and Air Rights Parcels; and

WHEREAS, the City desires to purchase from Lessee and Lessee desires to sell to the City the entire energy output of the Generating Facility pursuant to the terms and conditions of a Power Purchase Agreement for Eligible Renewable Energy Resource under the Palo Alto Clean Local Energy Accessible Now Program (the "CLEAN PPA"); and

WHEREAS, following a competitive selection process consistent with the requirements of section 2.30 of the Palo Alto Municipal Code, the City Council authorized the City to enter into this Lease with Lessee on \_\_\_\_\_, 2016.

NOW, THEREFORE, in consideration of these Recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

**LEASE PROVISIONS**

**1. INTERPRETATION; EXHIBITS.**

1.1. Interpretation.

1.1.1. The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

1.1.2. In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting.

1.2. Recitals. The Recitals set forth above are true and correct and are hereby incorporated into this Lease as if fully set forth herein.

1.3. Exhibits. The following Exhibits are attached to and made part of this Lease as if fully set forth herein.

- Exhibit "A" – DEFINITIONS
- Exhibit "B" – DESCRIPTION OF SITE
- Exhibit "C" – DESCRIPTION OF PREMISES
- Exhibit "D" – IMPROVEMENTS
- Exhibit "E" – WORK SCHEDULE
- Exhibit "F" – MEMORANDUM OF LEASE
- Exhibit "G" – INSURANCE REQUIREMENTS
- Exhibit "H" - FORM OF CLEAN PPA
- Exhibit "I" - FORM OF CLEAN PPA INTERCONNECTION AGREEMENT
- Exhibit "J" - FORM OF LENDER CONSENT AND AGREEMENT

**2. DEFINITIONS.**

Capitalized terms used in the Lease and not otherwise defined herein have the meanings set forth in Exhibit "A" (Definitions), which is attached to and made part of this Lease as if fully set forth herein.

**3. LEASE.**

City hereby leases to Lessee, in accordance with the terms and conditions hereafter set forth, a bundle of rights consisting of Air Rights Parcels and Ground Floor Areas (both of which are described more specifically in Exhibit "C" (Description of Premises)) of the Property necessary to allow for the installation, maintenance, operation of the Generating Facility and installation of the EV Chargers and Infrastructure (which upon installation shall be owned, maintained and operated by City). Unless specifically provided in this Lease, Lessee accepts the Property "as-is" on the Effective Date of this Lease.

**4. TERM, TERMINATION.**

4.1. Term.

4.1.1. Definition. This Lease shall commence on the Effective Date and shall

remain in effect until, for each of the four (4) Properties:

- 4.1.1.1. The Operations Period has expired (the “Term”); or
- 4.1.1.2. The Lease has been terminated by either the City or Lessee in accordance with the terms of this Lease.
- 4.1.2. Fifty-Year Limit. Notwithstanding the provisions of this section, under no circumstances shall the Term of this Lease extend beyond fifty (50) years, consistent with section 7 of the City Charter.
- 4.2. Termination. The City, in its sole discretion, shall have the right to terminate this Lease as follows:
  - 4.2.1. Public Purpose. If the City determines that it requires any individual, any combination or all parking garage facilities or portions thereof included in the Site at any time or multiple times during the Term for any public purpose as determined by City in its sole discretion, upon sixty (60) days prior written notice to Lessee, the City may in its sole discretion:
    - 4.2.1.1. Find an alternative City owned replacement site or sites, that has or have substantially similar insolation and reasonably acceptable access to the utility grid (with appropriate upgrades or otherwise), that Lessee may use for the Generating Facility or Generating Facilities, as applicable; provided, however, that the City shall pay for the reasonable costs of removal, lost revenue from production (for any down time exceeding ten (10) days) and costs of reinstallation of the Generating Facility (including interconnection and utility related fees) or Generating Facilities from the existing Site to the new site (after which such new parking garage facility or facilities shall thereafter be referred to as the “Site”); provided further that Lessee shall use commercially reasonable efforts to remove and reinstall the Generating Facility or Generating Facilities without delay and endeavor to minimize lost production time; or
    - 4.2.1.2. Terminate the Lease with respect to any individual or all parking garage facilities included in the Site and pay Lessee within sixty (60) days the termination value set forth on Schedule 23.2 attached hereto; provided that Lessor and Lessee each agree that termination of this Lease with respect to any individual or all parking garage facilities included in the Site shall cause a termination of the CLEAN PPA with respect to such individual or all parking garage facilities included in the Site.
  - 4.2.2. Hazardous Materials. In the event that:
    - 4.2.2.1. Any anticipated use of the Property by Lessee involves the generation or storage, use, treatment, disposal, or release of

Hazardous Materials;

- 4.2.2.2. Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating the Property, or the Site, if the contamination resulted from Lessee's actions, omissions or use of the Property; or
- 4.2.2.3. Lessee is subject to an investigation or enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Materials on the Property or Site.
- 4.2.3. Event of Default. City may terminate this Lease following an Event of Default in accordance with section 23 of this Lease.
- 4.3. Buyout Option for Generating Facilities. At certain points during the Term or at expiration of the Term, the City may elect a Buyout Option for any one, any combination, or all of the four (4) Generating Facilities:
  - 4.3.1. Buyout Option Price for all Generating Facilities. On the tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>), twentieth (20<sup>th</sup>), and twenty-fifth (25<sup>th</sup>) anniversary of the earliest individual Generating Facility to achieve its Commercial Operation Date, the City has the option to purchase all four (4) Generating Facilities on the Properties at a price determined to be the fair market value of all four (4) Generating Facilities as of such anniversary date, as applicable, calculated according to Section 4.3.3.3.
  - 4.3.2. Buyout Option for Individual Generating Facilities. The City may exercise its Buyout Option provided in Section 4.3.1 with respect to any individual Generating Facility, in its discretion. The Buyout Option price for each individual Generating Facility will be calculated by determining the fair market value of all four (4) Generating Facilities as of such anniversary date, as applicable, calculated according to Section 4.3.3.3. and multiplying such value by a fraction that is (A) the Generating Facility's capacity as of the commencement of operations of that Generating Facility over (B) the total capacity of all such Generating Facilities on the date each commenced operations.
  - 4.3.3. Exercise of Buyout Option; Notice; Fair Market Value.
    - 4.3.3.1. For all four (4) Generating Facilities. If the City desires to exercise its Buyout Option for all four (4) Generating Facilities at once, City will, no later than six (6) months prior to the applicable anniversary date of the Generating Facility with the earliest Commercial Operation Date, notify Lessee of City's election to exercise its Buyout Option for all four (4) Generating Facilities.

- 4.3.3.2. For an individual Generating Facility. If the City desires to exercise this Buyout Option for an individual Generating Facility, City will, no later than six (6) months prior to the applicable anniversary date of the Commercial Operation Date for that Generating Facility, notify Lessee of City's election to exercise its Buyout Option.
- 4.3.3.3. "Fair Market Value". The "fair market value" of the Generating Facilities shall be determined by an independent, third party appraiser mutually agreed upon by Lessor and Lessee having substantial experience in the valuation of solar facilities similar to the Generating Facility or Generating Facilities, as applicable. If Lessor and Lessee are unable to agree, then each of Lessor and Lessee shall designate an appraiser who shall designate a third appraiser having substantial experience in the valuation of solar facilities similar to the Generating Facility or Generating Facilities, as applicable, to perform the fair market value appraisal. The reasonable costs of such fair market value appraisal shall be borne by Lessor.

4.4. Removal of Generating Facility.

- 4.4.1. Except where a Buyout Option is exercised with respect to the relevant Generating Facility, for any individual, or for all four (4) Properties as applicable, Lessee shall at its sole expense, remove the Generating Facility and all its associated equipment and materials completely and vacate the Property and restore the Property to its original conditions, within ninety (90) days of:
  - 4.4.1.1. Upon expiration of the Term; or
  - 4.4.1.2. Upon termination.
- 4.4.2. The Parties expect reasonable wear and tear; provided, however, that Lessee shall repair to the reasonable satisfaction of City any damage to the Property caused by the Generating Facility or its removal.
- 4.4.3. Before departure, Lessee shall return any of City's keys or personal property to City in good, clean and sanitary condition, reasonable wear and tear excepted.
- 4.4.4. Lessee shall allow City to inspect the Property to verify the condition of the Property and its contents. At City's request, Lessee agrees to participate in a walk-through inspection of the Property to verify the Property's condition.
- 4.4.5. City shall provide Lessee with reasonable access to perform the necessary removal activities.
- 4.4.6. Upon City request, the usual and customary lighting, plumbing, utility and heating fixtures shall remain upon the Property upon termination or

expiration of this Lease.

**RENT.**

4.5. Rent. Lessee agrees to pay Rent to the City during the Term of this Lease on the schedule and in the amounts set forth in this Lease.

4.5.1. Schedule.

4.5.1.1. Annual, Payable in Advance. Lessee agrees to pay City Rent in the amounts set forth in section 5.1.2.3. Rent shall be paid on an annual basis, in advance for the upcoming year on July (1<sup>st</sup>) of each year.

4.5.1.2. Proration. Rent due for any partial year hereunder shall be prorated.

4.5.2. Amount.

4.5.2.1. Definitions.

4.5.2.1.1. “Initial Period” means, for each individual Property, the period commencing on the Effective Date and continuing until the commencement date of the Construction Period.

4.5.2.1.2. “Construction Period” means, for each individual Property, the Scheduled Construction Period, plus the Delayed Construction Period, if any.

4.5.2.1.3. “Scheduled Construction Period” means the period commencing on the Construction Start Date for the Generating Facility identified in Exhibit “E” (Work Schedule) for the Property continuing through the date by which Lessee is set to achieve the Commercial Operation Date for the Generating Facility, according to Exhibit “E” (Work Schedule).

4.5.2.1.4. “Delayed Construction Period” means, for each individual Property, the period commencing the day following the date Lessee was due to achieve its Commercial Operation Date for the Generating Facility according to Exhibit “E” (Work Schedule) to this Lease continuing through the date Lessee takes to actually achieve its Commercial Operation Date for the Generating Facility.

4.5.2.1.5. “Operations Period” means, for each individual Property, the period commencing with the actual

Commercial Operation Date for the Generating Facility, continuing until the twenty-fifth (25th) anniversary of such Commercial Operation Date.

4.5.2.2. Initial Period Rent. The Rent during the Initial Period for all Properties is zero dollars (\$0.00).

4.5.2.3. Construction Period Rent; Operations Period Rent.

4.5.2.3.1. Amount. The Rent during the Construction Period and the Operations Period is as set forth below:

| <b>PROPERTY</b>              | <b>RENT</b><br>Construction Period<br>Operations Period<br>( <i>per year</i> ) | <b>PRO RATA<br/>SHARE OF<br/>TOTAL RENT<br/>AMOUNT</b> |
|------------------------------|--|--|
| 475 Cambridge Garage         | \$5,000  | 25%  |
| 275 Cambridge Garage         | \$5,000  | 25%  |
| Webster Garage               | \$5,000  | 25%  |
| Bryant Garage                | \$5,000  | 25%  |
| <b>TOTAL RENT<br/>AMOUNT</b> | <b>\$20,000</b>  | <b>100%</b>  |

4.5.2.3.2. Calculation. The Rent during the Construction Period and the Operations Period for each individual Property is calculated based on that Property's pro rata share of the Total Rent Amount.

4.5.2.4. Delayed Construction Period Penalties. In addition to Lessee's obligation to pay Rent during Delayed Construction Period(s), if any, Lessee is also subject to Delay Liquidated Damages during the Delayed Construction Period, pursuant to section 6.2 of this Lease.

#### 4.6. Rent Payment Procedures.

4.6.1. Rent shall be due and payable by Lessee promptly upon receipt of an invoice from City therefore and rent shall be delivered to City's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. This designated place of payment may be changed at any time by City upon ten (10) days advanced written notice to Lessee.

4.6.2. Lessee agrees that acceptance of any late or incorrect Rent or other payment submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing section 5.4 (Late Charge) or any other remedy provided in this Lease. Rent payments shall be effective upon



receipt by City.

- 4.6.3. Acceptance of Rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach by Lessee.
- 4.6.4. City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.
- 4.7. Partial Payment. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay Rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.
- 4.8. Late Charge.
  - 4.8.1. Lessee acknowledges late payment of Rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City.
  - 4.8.2. Therefore, if City does not receive any installment of Rent due from Lessee within ten (10) days after the date such Rent is due, Lessee shall pay to City an additional sum of five percent (5%) of the overdue Rent as a late charge.
  - 4.8.3. The Parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment of Rent by Lessee.
  - 4.8.4. Acceptance of any late charge shall not constitute a waiver of any Lessee Event of Default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

## **5. PARKING FEES**

- 5.1. Parking Elimination Fees. The Parties agree that if the installation, maintenance and/or operation of the Generating Facilities cause any permanent loss of use or reduction of up to two (2), but no more than two (2), parking spaces at each individual Site at any time during the Term, Lessee shall compensate Lessor for such loss of parking spaces in an amount equal to (a) the fee set forth under the heading, "Parking in lieu for the Downtown Assessment District," on the municipal fee schedule entitled, "City of Palo Alto Development Impact Impacts," in effect at the time such loss initially occurs (the "In-Lieu Parking Fee"), multiplied by (b) the number of permanently eliminated parking spaces (the "Parking Elimination Fees"). The In-Lieu Parking Fee is updated annually by

City. As of June 14, 2015, the In-Lieu Parking Fee is sixty five thousand, four hundred and seventy-five dollars (\$65,475.<sup>00</sup>) per parking space. Lessee shall pay City any Parking Elimination Fees promptly after receipt of an invoice therefor. Notwithstanding any provision to the contrary, the installation, maintenance and/or operation of the Generating Facilities shall not cause a permanent loss of more than two (2) parking spaces per individual Site.

5.2. Delay Liquidated Damages.

- 5.2.1. In the event that Lessee enters the Delayed Construction Period, Lessee shall pay City the Delay Liquidated Damages as set forth in section 6.2.2. Lessee shall pay City such Delay Liquidated Damages every fourteen (14) days after receipt of an invoice therefor while in the Delayed Construction Period.
- 5.2.2. During the Delayed Construction Period, Lessee will be assessed Delay Liquidated Damages on a daily basis according to the table set forth immediately below. Such Delay Liquidated Damages shall be cumulative and apply to and across all Properties during a Delayed Construction Period.

| <b>Property</b>      | <b>Daily Delay Liquidated Damages Per Property</b> |
|----------------------|--|
| 475 Cambridge Garage | \$632.00   |
| 275 Cambridge Garage | \$768.00   |
| Webster Garage       | \$1400.00  |
| Bryant Garage        | \$1820.00  |

- 5.2.3. The Parties agree that the Delay Liquidated Damages set forth in section 6.2.2 are reasonable and represent a fair and genuine estimate of the damages that City will suffer if Lessee enters the Delayed Construction Period. The Parties acknowledge that it would be impracticable or extremely difficult to fix actual damages in such circumstances, and therefore they have deemed the Delay Liquidated Damages set forth above to be the amount of damage sustained by City upon the occurrence of such circumstances.

**6. SECURITY DEPOSIT.**

- 6.1. Amount. Lessee agrees to provide City with a Security Deposit of twenty-five thousand dollars (\$25,000.<sup>00</sup>).

- 6.2. Use of Security Deposit. Within ten (10) days of the Effective Date of this Lease, Lessee shall deliver to City its Security Deposit. City may use these funds as are reasonably necessary to remedy any Lessee's failure to pay Rent, to repair damages caused by Lessee's acts or omissions, or expenses incurred to clean the Property upon termination of tenancy.
- 6.3. Reinstatement of Security Deposit. If any portion of the Security Deposit is used towards Rent or damages at City's sole discretion, Lessee agrees to reinstate the total Security Deposit upon receipt of ten (10) days written notice from City.
- 6.4. Return of Security Deposit. City agrees to provide the balance of Security Deposit, if any, to Lessee's last known address within thirty (30) days of the completion of surrender and removal at all four (4) Properties.

**7. USE OF PROPERTY.**

- 7.1. Required Uses. Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses") at the Property: installation, operation and maintenance of the Generating Facility in Exhibit "D" (Improvements) of this Lease, and installation of EV Chargers and Infrastructure, also described in Exhibit "D" (Improvements) for City ownership.
- 7.2. Permitted Uses. Lessee may not use the Property for any purpose other than the Required Uses without City's prior written consent, which consent may be withheld in the City's sole and absolute discretion.
- 7.3. Prohibited Uses. Lessee shall not use Property for any purpose not expressly permitted hereunder.
  - 7.3.1. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Property, or permit or allow the Property to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Property.
  - 7.3.2. No materials or articles of any nature shall be stored outside upon any portion of the Properties. Lessee will not use Property in a manner that increases the risk of fire, cost of fire insurance or improvements thereon.
  - 7.3.3. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Property; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Property.
  - 7.3.4. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Property except for the garage or driveway. No repair, overhaul or modification of any motor

vehicle shall take place on the Property or the street in front of said Property.

7.3.5. Lessee, at its own expense, shall keep the Property in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the publically accessible areas, roof, sidewalks and underground plumbing, which is not the fault of Lessee.

7.4. Condition and Use of Property. City makes no warranty or representation of any kind concerning the condition of the Property, or the fitness of the Property for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the Parties that Lessee has personally inspected the Property, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the Required Uses, and any Permitted Uses authorized by City.

## **8. HAZARDOUS MATERIALS.**

8.1. Use of Hazardous Materials Prohibited. Lessee shall not cause or permit any Hazardous Material (as defined in Exhibit "A" (Definitions)) to be brought upon, kept or used in or about the Property by Lessee, its agents, employees, contractors or invitees.

8.2. City's Right to Perform Tests. At any time during the Term, City shall have the right to enter upon the Property in order to conduct tests of water, soil and other relevant media or substances to assess the environmental condition of the Property.

## **9. UTILITIES AND OPERATING EXPENSES.**

9.1. Lessee shall fully and promptly pay for all expenses associated with Lessee's use of the operation Property, including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, landscaping installation and maintenance, and other public utilities associated with the Required Uses or Permitted Uses by Lessee.

9.2. Subject to Lessee's obligation to pay for such utilities service set forth in section 10.1 of this Lease, City shall furnish to the Properties reasonable quantities of gas, electricity, water, sewer and refuse collections services as required for Lessee's and City's continued use. However, if City is required to construct new, improved or additional installations in connection with utilities, including, without limitation, wiring, plumbing, conduits, transformers, and mains, resulting from the Required Use or Permitted Use by Lessee, Lessee shall pay to City the total cost of such new, improved or additional installations in the amounts and in accordance with any schedule set forth in the City's Utilities Rules and Regulations, as the same may be amended from time to time.

## **10. TAXES.**

10.1. Payment of Real Property Taxes. Lessee shall pay Lessee's share of all Real Property Taxes that become due and payable to City on or before the later of ten (10) days prior to the delinquency thereof or three (3) days after the date on which Lessee receives a copy of the tax bill and notice of City's determination hereunder. Lessee's liability to pay Real

Property Taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration or termination of the Lease.

- 10.2. Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.
- 10.3. Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Property, the personal property contained on the Property and other taxes, fees, and assessments regarding any activities which take place at the Property. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

## **11. CONTRACTORS, CONSULTANTS; WORK HOURS**

### **11.1. Contractors, Consultants.**

- 11.1.1. Any contractor or consultant engaged by Lessee to install, construct, operate or maintain the Generating Facility or Generating Facilities, or to install the EV Chargers and Infrastructure must be properly licensed.
- 11.1.2. Lessee agrees to advise the City of any contractors or consultants involved in the installation or construction of the Improvements in advance of the commencement of the Construction Period for the Generating Facility or the installation and construction of EV Chargers and Infrastructure.
- 11.1.3. Lessee is responsible for the conduct of its contractors and consultants, and any subcontractors thereto, and City shall have no contractual relationship with any such contractors or consultants.
- 11.1.4. All Lessee's contractors and consultants must carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction consistent with requirements set forth in Section 27 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of City and Lessee in accordance with the Provisions of Exhibit "G" (Insurance Requirements).

### **11.2. Work Hours.**

- 11.2.1. Except for emergency situations or unplanned outages, Lessee shall cause all installation, construction, maintenance or operations work to be performed as authorized by Lessee's permit. All such work shall be in a manner that

minimizes interference with City and City's employees, visitors, tenants, licensees and their customers to the extent commercially practicable. Lessee shall notify the Lease Administrator at least seventy two (72) hours in advance of such work, including where such activities could result in the loss of or limitation of access to the Site. Lessee shall schedule such activities in coordination with the City to minimize said loss or limitation of access to the Site.

- 11.2.2. Except as expressly set forth in Exhibit "E" (Work Schedule), the Property, and the Site shall remain open for business to during the Construction Period and the Operations Period.
- 11.2.3. As set forth in section 5 (Rent) and section 6 (Parking Fees) of this Lease, Lessee shall compensate the City for any loss of access, or exclusive use by Lessee, of common areas and associated parking spaces at the Site. If Lessee or any of its agents, suppliers or subcontractors parks any vehicles in parking spaces not on the top floor of any Site, Lessee shall compensate City for such temporary parking usage at the daily posted parking rate then in-effect for such Site during the Term.

## **12. OWNERSHIP OF IMPROVEMENTS.**

- 12.1. Generating Facilities. Title to the Generating Facility placed on the Property by Lessee shall be held by Lessee during the Term, subject to City's exercise of its Buyout Option.
  - 12.1.1. In the event City exercises its Buyout Option, Lessee shall take whatever actions are necessary to transfer fee title ownership of the Generating Facility placed by Lessee on the Property to City, free and clear from any lien, or monetary or other encumbrances.
  - 12.1.2. Should this Lease be terminated for any reason prior to the expiration of the Term, other than as a result of the City exercising its Buyout Option as provided for in section 4.3, all the Generating Facility placed by Lessee on the Property shall remain under the ownership of Lessee and shall be removed by Lessee in accordance with section 4.4 of this Lease.
  - 12.1.3. City acknowledges and agrees that:
    - 12.1.3.1. Notwithstanding that the Generating Facilities are a fixture on the Property, the City has no ownership interest in the Generating Facilities, other than as set forth in this Lease (Buyout Option) and Lessee is the exclusive owner and operator of the Generating Facilities;
    - 12.1.3.2. The Generating Facilities, may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a "Transfer") with the fee interest or leasehold rights to the Property by City; and

12.1.3.3. Nothing shall prevent or limit City's right to Transfer the Property or the Site; provided, however that:

12.1.3.3.1. City agrees to give Lessee at least fifteen (15) days written notice prior to any Transfer of all or a portion of the Property or the Site identifying the transferee, the portion of the Property or the Site to be transferred and the proposed date of transfer; and

12.1.3.3.2. City agrees that this Lease and any right-of-way granted hereunder shall run with the Property and the Site and survive any Transfer of the Property or the Site; provided that if and solely if a Transfer of the Property by the City causes a change to the Lessor, this Lease shall terminate and the termination value on Schedule 23.2 for the applicable year for each Generating Facility shall be payable by Lessor and Lessor and Lessee hereby agree that the CLEAN PPA as to each Site or all Sites, as applicable, shall terminate, unless Lessee otherwise agrees that the new Lessor has acceptable credit quality, which agreement shall not be unreasonably withheld or Lessor provides reasonably acceptable credit support.

12.2. EV Chargers.

12.2.1. Lessor hereby grants Lessee the right to install and the right to locate the EV Chargers and Infrastructure, and Lessee hereby agrees to install the EV Chargers and Infrastructure. To the extent practicable, Lessee agrees to work with City to install the EV Chargers and Infrastructure near existing chargers or in alternate locations that have the potential to maximize construction, operational or other efficiencies for City as directed by City.

12.2.2. Upon completion of installation of EV Chargers and Infrastructure by Lessee:

12.2.2.1. Lessee has no ownership interest in the EV Chargers and Infrastructure, and City is the exclusive owner of the EV Chargers and Infrastructure.

12.2.2.2. Lessee shall take commercially reasonable actions as are necessary to transfer fee title ownership of the EV Chargers and Infrastructure placed by Lessee on the EV Chargers and Infrastructure to City, free and clear from any lien, or monetary or other encumbrances, along with the transfer of any applicable warranties, guarantees, interests or other contracts, held by Lessee to City.

12.2.2.3. The EV Chargers and Infrastructure shall be powered by electricity provided by City at the City's sole expense.

**13. INSTALLATION AND CONSTRUCTION IMPROVEMENTS (GENERATING FACILITIES AND EV CHARGERS AND INFRASTRUCTURE) BY LESSEE.**

13.1. Installation and Construction of Improvements.

13.1.1. City Consent. City hereby consents to the installation on the Property of the Improvements by Lessee, including the Generating Facilities and EV Chargers and Infrastructure, as shown in Exhibit "D" (Improvements). Lessee shall use commercially reasonable efforts to cause the installation and construction of such Improvements in accordance with the specifications set forth in Exhibit "D" (Improvements) and Exhibit "E" (Work Schedule) attached to this Lease.

13.1.2. Performance. Lessee shall be responsible for the installation of the Improvements, including all costs associated with the installation of the Improvements. Within thirty (30) days of the Effective Date, Lessee shall commence pre-installation activities relating to the Improvements, which shall include, without limitation and as applicable to the specific Improvement involved, using commercially reasonable efforts to:

13.1.2.1. Obtain financing for construction of the Improvements, if necessary;

13.1.2.2. Execute all contracts, and agreements required for the installation and operation of the Improvements, including, for the Generating Facility, the CLEAN PPA;

13.1.2.3. Execute all agreements required for Utility interconnection of the Generating Facility, including the CLEAN PPA Interconnection Agreement; and

13.1.2.4. Obtain, at no additional cost and expense to City, all Permits necessary for the installation and operation of the Improvements. Lessee is responsible for and City agrees to cooperate in Lessee's seeking any and all Permits Lessee finds necessary or desirable for the installation of the Improvements.

Lessee will carry out the activities set forth in this section in accordance with all applicable laws, rules, codes and ordinances and in such a manner as will not unreasonably interfere with City's operation or maintenance of the Site as a parking facility.

13.1.3. Construction Standards.

13.1.3.1. Lessee shall in a good, efficient and workmanlike manner, cause to be designed, constructed, and installed within the Property, at



no cost to City, appropriate equipment, materials and services to adequately accommodate the Improvements and the Required Uses and Permitted Uses (if any) under this Lease.

13.1.3.2. Lessee shall prepare the plans and specifications for approval by the City's Building Division and Planning & Community Development Divisions as required by the Palo Alto Municipal Code.

13.1.3.3. Lessee shall obtain approval of all such plans and specifications and shall cause the construction of all Improvements to be completed within twelve (12) months of the effective date set forth in the CLEAN PPA.

13.1.3.4. All design and construction performed by or on behalf of Lessee shall materially and substantially conform to the approved plans, specifications, construction and architectural standards approved by City and contained in Exhibit "D" (Improvements).

13.1.3.5. All work shall be performed in a manner that complies with all applicable governmental permits, laws, ordinances and regulations, and shall meet all other requirements contained in this Lease.

13.1.3.6. Lessee shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste, material and rubbish and to comply with reasonable safety procedures established by City for the conduct of business on the Site.

13.1.3.7. Lessee shall keep the Property free and clear of all claims and liens resulting from construction done by or for Lessee.

13.1.4. Cost of Improvements. Lessee shall pay all costs for construction done or caused to be done by Lessee on the Property as permitted or required by this Lease. Promptly after completion of construction, Lessee shall provide to the Lease Administrator a statement of the reasonable and actual costs of construction for the Improvements described in Exhibit "D", which statement shall be certified as to accuracy and signed by Lessee under penalty of perjury.

13.1.5. Assurance of Completion.

13.1.5.1. For the Construction of the Improvements. The estimated construction cost of the Improvements set forth in Exhibit "D" to be constructed by Lessee is \$3.05 per Watt. Within thirty (30) days of the Effective Date of this Lease, Lessee shall furnish to the Lease Administrator evidence that assures City that sufficient monies are available to Lessee to complete the construction of the Improvements. The amount of such assurance shall be at

least the estimated construction cost. Evidence of such assurance shall take one of the forms set out below and City is authorized to draw on such assurances to guarantee Lessee's full and faithful performance of all of the terms, covenants, and conditions of this Lease:

13.1.5.1.1. Completion Bond;

13.1.5.1.2. Performance bond, labor and material bonds, supplied by Lessee's contractor or contractors, provided the bonds are issued jointly to Lessee and City;

13.1.5.1.3. Irrevocable letter of credit from a financial institution; or

13.1.5.1.4. Any combination of the above.

13.1.5.2. Additional Construction or Alteration. Prior to commencement of any construction or alteration expected to cost more than ten thousand dollars (\$10,000.<sup>00</sup>), Lessee shall furnish the Lease Administrator evidence that assures City that sufficient monies will be available to Lessee to complete the proposed work. Such assurance may be in the form identified in section 14.1.5.1.1 to section 14.1.5.1.4 of this Lease.

13.1.5.3. All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the Lease Administrator. All bonds and letters of credit shall be in a form acceptable to the Lease Administrator, and shall insure faithful and full observance and performance by Lessee of all of the terms, conditions, covenants, and agreements relating to the construction of Improvements or other alterations in accordance with this Lease.

13.1.6. Certificate of Inspection. Upon completion of construction of any building, the Generating Facilities and the EV Chargers and Infrastructure, Lessee shall submit to the Lease Administrator a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

13.1.7. As Built Plans. Lessee shall provide the Lease Administrator with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Property upon completion of any: (i) new construction; (ii) structural alterations; or (iii) non-structural alterations costing more than twenty-five thousand dollars (\$25,000.<sup>00</sup>), which shall include, by way of clarification but not of limitation, the Generating Facilities and the EV

Chargers and Infrastructure.

**14. MAINTENANCE AND OPERATION OF GENERATING FACILITIES BY LESSEE**

14.1. Maintenance.

14.1.1. City Responsibilities.

14.1.1.1. Site. City shall be responsible for the maintenance and repair of the overall Site, other than the Generating Facility, including main support systems not exclusively serving the Lessee's facilities, such as electrical system repair, painting, structural repairs, and all maintenance of landscaped areas.

14.1.1.2. EV Chargers and Infrastructure. City shall be responsible for maintenance of all EV Chargers and Infrastructure, which are to be solely owned by City following Lessee's installation.

14.1.1.3. Common Areas. City shall maintain or cause to be maintained, including repair and replacement as necessary, all Common Areas serving the Property.

14.1.2. Lessee Responsibilities. Lessee shall maintain, at Lessee's expense, all Generating Facilities, including all related equipment, furnishings and trade fixtures upon the Property in a safe, clean, wholesome, and sanitary condition required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Lease. Lessee agrees to promptly (and in no case later than within thirty (30) days written notice from City) paint, clean, and abate graffiti, to the complete satisfaction of City, and in compliance with all applicable laws, throughout the term of this Lease.

14.1.3. Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Property in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Property free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City in the City's sole discretion) after demand by the City, City shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this section.

14.2. Operation.

14.2.1. Generating Facility.

14.2.1.1. Lessee shall be solely responsible for operation and maintenance of the Generating Facility (subject, however, to the obligations and responsibilities of City herein). Lessee's obligation shall include, without limitation, the obligation to promptly make or pay (as determined by City) for any repairs to the Property or to the Site to the extent directly caused by Lessee, its employees, agents, contractors or subcontractors.

14.2.1.2. Lessee shall bear all risk of loss with respect to the Generating Facility, except:

14.2.1.2.1. As set forth elsewhere in this Lease; or

14.2.1.2.2. For actions or negligence by the City or its agents and employees.

14.2.1.3. Lessee shall operate the Generating Facilities so as to keep such Generating Facilities in good operating condition and repair, in compliance with all applicable laws, and in accordance with generally accepted practices of the electric industry, in general, and the solar generation industry in particular.

14.2.2. EV Chargers and Infrastructure. City shall be responsible for operation of all EV Chargers and Infrastructure, which are to be solely owned by City following Lessee's installation.

**15. RELOCATION**

15.1. City may request to move the Generating Facility on either a temporary or permanent basis to another location on the Site or to another site owned by City.

15.2. For any such relocation that is required due to Site work or another purpose unrelated to the Generating Facility, the City is responsible for all associated reasonable costs of removal and reinstallation and must proceed diligently.

**16. ALTERATIONS BY LESSEE**

Lessee shall not make any alterations or modifications to the Property without obtaining the prior written consent of the Lease Administrator. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Property provided such fixtures and installation have been reviewed and approved by the Lease Administrator.

**17. REPRESENTATIONS AND WARRANTIES; COVENANTS**

17.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

- 17.1.1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- 17.1.2. The execution, delivery and performance of this Lease is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- 17.1.3. This Lease and each other document executed and delivered in accordance with this Lease constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- 17.1.4. It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- 17.1.5. There is not pending or, to its knowledge, threatened against it or any of its affiliates, if any, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Lease; and
- 17.1.6. It is acting for its own account, has made its own independent decision to enter into this Lease and as to whether this Lease is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Lease.

17.2. Covenants. Each Party covenants that, during the Term:

- 17.2.1. It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- 17.2.2. It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Lease; and
- 17.2.3. It shall perform its obligations under this Lease in a manner that does not

violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

**18. HOLD HARMLESS, INDEMNIFICATION.**

- 18.1. General Indemnification. Lessee agrees to protect, defend (with counsel acceptable to City), hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, penalties, forfeiture, and/or expense and/or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Lessee's or its contractors, consultants, agents or assigns negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims. This indemnity shall be in addition to the Hazardous Materials Indemnity and Indemnity for claims arising out of construction contained in this Lease and shall survive shall survive the expiration of or early termination of the Lease Term.
- 18.2. Indemnity for Claims Arising Out of Construction. Lessee agrees to protect, defend (with counsel acceptable to City), hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, penalties, forfeiture, and/or expense or damage arising out of work performed on the Property by Lessee or its contractors, consultants, agents or assigns, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims.
- 18.3. Hazardous Materials Indemnity. Lessee shall protect, defend (with counsel acceptable to City), hold harmless, and indemnify the City, its City Council, commissions, officers, agents, volunteers, and employees harmless from and against any and all claims, injuries, liabilities, costs, penalties, forfeitures, losses, and/or expenses or damages, including without limitation, diminution in value of the Property or Site, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Property or Site, damages arising from any adverse impact or marketing of the Property or Site and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Property by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any law applicable to the use, storage or disposal of Hazardous Materials, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnification obligations shall include, without

limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property or Site, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

- 18.4. Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Property, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.
- 18.5. Notice. Lessee shall give City immediate notice of any claim or liability indemnified against under this Lease.

**19. FORCE MAJEURE, DAMAGE AND DESTRUCTION.**

- 19.1. Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Property by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. City and Lessee waive the provisions of any statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.
- 19.2. Force Majeure. Force Majeure shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to Rent to be paid by Lessee pursuant to this Lease.
- 19.3. Restoration of Property by Lessee.
- 19.3.1. Destruction Due to Risk Covered by Insurance. If, during the term, the Property is totally or partially destroyed from a risk covered by the insurance described in Section 27 (Insurance), rendering the Property totally or partially inaccessible or unusable, Lessee shall restore the Property to substantially the same condition as it was in immediately before destruction ("Restoration"), whether or not the insurance proceeds are sufficient to cover the actual cost of Restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the Restoration, either party can terminate this Lease immediately by giving notice to the other Party.
- 19.3.1.1. Minor Loss. If, during the term of this Lease, the Property is destroyed from a risk covered by the insurance described in Section 27 (Insurance), and the total amount of loss does not exceed twenty thousand dollars (\$20,000.<sup>00</sup>), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the Restoration of the Property in accordance with this Lease.
- 19.3.1.2. Major Loss-Insurance Trustee. If, during the term of this Lease,

the Property is destroyed from a risk covered by the insurance described in Section 27 (Insurance), and the total amount of loss exceeds twenty thousand dollars (\$20,000.<sup>00</sup>), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the Parties ("the Insurance Trustee").

19.3.2. Destruction Due to Risk Not Covered by Insurance. If, during the term, the Property is totally or partially destroyed from a risk covered by the insurance described in Section 27 (Insurance), rendering the Property totally or partially inaccessible or unusable, Lessee shall engage in Restoration of the Property, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the Restoration, either Party can terminate this Lease immediately by giving notice to the other Party.

19.3.2.1. If the cost of Restoration exceeds ten percent (10%) of the then replacement value of the Property totally or partially destroyed, Lessee can elect to terminate this Lease by giving notice to City within sixty (60) days after determining the restoration cost and replacement value. If Lessee elects to terminate this Lease, City, within thirty (30) days after receiving Lessee's notice to terminate, can elect to pay to Lessee, at the time City notifies Lessee of its election, the difference between ten percent (10%) of the replacement value of the Property and the actual cost of Restoration, in which case Lessee shall restore the Property. On City's making its election to contribute, each Party shall deposit immediately the amount of its contribution with such institutional lender or title company as may be jointly selected by the Insurance Trustee. If the destruction does not exceed ten percent (10%) of the then replacement value of the Property, Lessee shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Exhibit "G" (Insurance). This Lease shall terminate if Lessee elects to terminate this Lease and City does not elect to contribute toward the cost of Restoration as provided in this section.

19.3.2.2. If the Property is destroyed from a risk not covered by the insurance described in Section 27 (Insurance), and Lessee has the obligation to engage in Restoration of the Property as provided in section 20.3.2 of this Lease, both Parties shall deposit with the Insurance Trustee their respective contributions toward the cost of Restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

19.3.2.2.1. The sums shall be paid in installments by the



Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration.

19.3.2.2.2. A ten percent (10%) retention fund shall be established that will be paid to the contractor on completion of Restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Property is free of all mechanics' liens and lienable claims.

19.3.2.2.3. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

19.3.2.2.4. If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of Restoration, Lessee shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating the amount of the deficiency. Any undisbursed funds after compliance with the provisions of this section shall be delivered to City to the extent of City's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.

19.3.2.3. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, City shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

19.3.3. Procedure for Restoring the Property.

19.3.3.1. When Lessee is obligated to engage in Restoration of the Property or a portion of the Property, within sixty (60) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable laws that will be necessary for restoration of the Property. The plans, specifications, and working drawings must be approved by City. City shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If City disapproves the plans, specifications, and working drawings, City shall notify Lessee of its objections and City's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate governmental authorities and that they will be prepared in such a manner as to obtain that approval.

19.3.3.2. The Restoration shall be accomplished as follows:

19.3.3.2.1. Lessee shall complete the Restoration within sixty (60) working days after final plans and specifications and working drawings have been approved by the appropriate governmental authorities and all required Permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control).

19.3.3.2.2. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction consistent with requirements set forth in Section 27 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of City and Lessee in accordance with the Provisions of Exhibit "G" (Insurance Requirements).

19.3.3.2.3. Lessee shall notify City of the date of commencement of the Restoration at least ten (10) days before commencement of the Restoration to enable City to post and record notices of non-responsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to City to insure completion of the construction.

- 19.3.3.3. Lessee shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Property.
- 19.3.3.4. On completion of the Restoration Lessee shall immediately record a notice of completion in Santa Clara County.
- 19.3.3.5. The Restoration shall not be commenced until sums sufficient to cover the cost of Restoration are placed with the Insurance Trustee as provided in section 20.3.1.2 of this Lease.

**20. SIGNS.**

Lessee shall not place, construct, maintain, or allow any signs upon the Property without prior written consent of City.

**21. ASSIGNMENT AND SUBLETTING.**

21.1. City's Consent Required.

21.1.1. No Assignment Without Consent.

- 21.1.1.1. Lessee shall neither assign this lease, nor any interest therein, and shall neither sublet nor encumber the Property or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or any portion thereof, without the prior written consent of City.
- 21.1.1.2. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.
- 21.1.1.3. At City's request, Lessee shall promptly deliver financial statements, information and other evidence satisfactory to City regarding any proposed assignment or change of control under this Section 22.1.

21.1.2. Consent.

- 21.1.2.1. Any direct or indirect change of control of Lessee (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of City which may be withheld in its sole discretion.
- 21.1.2.2. Lessee shall be permitted to assign this Lease as collateral for any financing or refinancing of the Generating Facilities with the prior written consent of Lessor, which consent shall not be

unreasonably withheld, conditioned or delayed. If Lessor gives its consent, such consent shall be in a form substantially similar to the form of "Lender Consent and Agreement" attached hereto as Exhibit "J".

21.1.3. No Consent Subject to Creditworthiness Test. Notwithstanding the foregoing, no Consent and Agreement shall be required for:

21.1.3.1. Any assignment or transfer of this Lease by the Lessee to an affiliate of the Lessee, provided that such affiliate's creditworthiness is equal to or better than that of Lessee, as reasonably determined by Lessor; or

21.1.3.2. Any assignment or transfer of this Lease by the Lessee to a person succeeding to all or substantially all of the assets of Lessee, provided that such person's creditworthiness is equal to or greater than that of Lessee, as reasonably determined by the Lessor.

21.1.4. Assignment.

21.1.4.1. Written notification of any assignment or transfer of this Lease shall be given to the Lessor.

21.1.4.2. This Lease shall be binding upon any permitted assignee or successor of Lessee.

21.1.4.3. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person.

21.1.4.4. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease.

21.2. Hazardous Materials. Without limiting City's authority to withhold its consent in other circumstances, it shall not be unreasonable for City to withhold its consent to an assignment or sublet to a proposed assignee or sublessee if:

21.2.1. Any anticipated use of the Property by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in any manner or for any purpose;

21.2.2. The proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contamination at a property, if the contamination resulted from such assignee or sublessee's action, omission or other use of the property in question; or,

21.2.3. The proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.

21.3. No Release of Lessee. No subletting or assignment as approved by City shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay Rent and to perform all other obligations by Lessee hereunder. The acceptance of Rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

## **22. EVENT OF DEFAULT; REMEDIES.**

22.1. Event of Default. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease by Lessee ("Lessee Event of Default"):

22.1.1. Abandonment. Abandonment of the Property by Lessee as defined by California Civil Code section 1951.3;

22.1.2. Failure to Pay Rent; Other Payments. Failure by Lessee to make any payment of Rent or any other payment (including, without limitation Parking Fees, if any) required to be made by Lessee hereunder, as provided in this Lease, where such failure continues for a period of ten (10) business days after City provides Lessee with written notice thereof. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes ("Notice to Pay Rent or Quit"), such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

22.1.3. Failure to Satisfy Lease Obligations. Failure by Lessee to observe or perform any of the Representations, Warranties or Covenants set forth in section 18 of this Lease or any of the material covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after City provides Lessee with written notice thereof; provided, however, that if the nature of Lessee's failure is such that more than thirty (30) days are reasonably required for its cure, then a Lessee Event of Default shall not have occurred if Lessee demonstrates to City's reasonable satisfaction that it has commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. Notwithstanding the foregoing, a Lessee Event of Default shall not occur under this section 22.1.3 if the failure to observe or perform any of the Representations, Warranties or Covenants set forth in Section 18 of this Lease or any of the material covenants, conditions or provisions of this Lease in any material respect is caused by an error or omission of an administrative or operational nature.

- 22.1.4. Assignment to Creditors; Debtor Status; Bankruptcy and Seizure.
  - 22.1.4.1. Making, by Lessee, of any general arrangement or assignment for the benefit of creditors;
  - 22.1.4.2. Becoming a “Debtor” as defined in 11 U.S.C. §101, as the same may be amended from time to time, (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days);
  - 22.1.4.3. The appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee’s assets located at or on the Property or of Lessee’s interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee’s assets located at or on the Property or of Lessee’s interest in this Lease, where such seizure is not discharged within thirty (30) days.
- 22.1.5. Construction of Generating Facility. Failure, by Lessee to diligently pursue construction of the Generating Facility, including where the Delayed Construction Schedule Period results in loss or limited access to the Property or the Site that lasts more than ninety (90) days. Such time period may be extended by City, in its sole discretion, in writing prior to expiration the ninety (90) day period.
- 22.1.6. Failure to Achieve Commercial Operation Date. Failure by Lessee to complete construction of all Generating Facilities within 12 months of the effective date set forth in the CLEAN PPA.
- 22.2. Lessor Event of Default; Remedies of Lessee. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease by Lessor (“Lessor Event of Default”):
  - 22.2.1. Failure to Satisfy Lease Obligations. Failure by Lessor to observe or perform any of the Representations, Warranties or Covenants set forth in section 18 of this Lease or any of the material covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after Lessee provides City with written notice thereof; provided, however, that if the nature of Lessor’s failure is such that more than thirty (30) days are reasonably required for its cure, then a Lessor Event of Default shall not have occurred if Lessor demonstrates to Lessee’s reasonable satisfaction that it has commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. Notwithstanding the foregoing, a Lessor Event of Default shall not occur under this section 23.2.1 if the failure to observe or perform any of the Representations, Warranties or Covenants set forth in Section 18 of this Lease or any of the material covenants, conditions or provisions of this Lease in any material respect is caused by an error or omission of an administrative

or operational nature.

22.2.2. Assignment to Creditors; Debtor Status; Bankruptcy and Seizure.

22.2.2.1. Making, by Lessor, of any general arrangement or assignment for the benefit of creditors;

22.2.2.2. Becoming a “Debtor” as defined in 11 U.S.C. §101, as the same may be amended from time to time, (unless, in the case of a petition filed against Lessor, the same is dismissed within sixty (60) days);

22.2.2.3. The appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessor’s assets located at or on the Property or of Lessor’s interest in this Lease where possession is not restored to Lessor within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessor’s assets located at or on the Property or of Lessor’s interest in this Lease, where such seizure is not discharged within thirty (30) days.

22.2.3. Lessee Remedies. In the event of any Lessor Event of Default under this Lease, this Lease and the CLEAN PPA shall terminate and Lessor shall pay within thirty (30) days the termination value specified on Schedule 23.2 for each of the Generating Facilities for the year corresponding with when a Lessor Event of Default occurs, plus any reasonable out of pocket expenses of Lessee.

22.3. Termination of CLEAN PPA. Any termination of the CLEAN PPA shall cause this Lease to terminate; provided, however, that in no such event shall the Lessor owe the Lessee the termination value specified on Schedule 23.2, other than as set forth in Sections 4.2.1.2, 13.1.3.3.2 and 23.2.3.

22.4. Remedies of City. In the event of any Lessee Event of Default, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such Event of Default or breach:

22.4.1. Termination. Terminate Lessee’s right to possession of the Property by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Property, but not the Improvements, to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of the Event of Default or breach, including but not limited to:

22.4.1.1. The cost of recovering possession of the Property and all Improvements constructed thereon;

22.4.1.2. Expenses of reletting, including necessary renovation and

alteration of the Property and the Improvements constructed thereon;

22.4.1.3. Reasonable attorneys' fees;

22.4.1.4. The worth, at the time of the award of the unpaid Rent that had been earned at the time of termination of this Lease; and

22.4.1.5. The worth, at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

22.4.2. Continue Lease. Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Property. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover Rent and other fees and payments as they become due hereunder.

22.4.3. Other Remedies. Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. City shall have all remedies provided by law and equity.

22.5. No Relief from Forfeiture After Event of Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Property by reason of any Event of Default or breach of this Lease by Lessee.

22.6. Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Property within forty-five (45) days after of the expiration or termination of this Lease, such personal property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such personal property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such personal property.

### **23. INTEREST ON PAST-DUE OBLIGATIONS.**

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

### **24. HOLDING OVER.**

If Lessee remains in possession of the Property or any part thereof after the expiration of the Term, including any Extension Term (if any), such occupancy shall be a tenancy from month-to-month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of two (2) times the Operations Period Rent or, as applicable, the Extension Term Rent, in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the



right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

**25. ACCESS.**

25.1. For Lessee.

25.1.1. Ingress & Egress. City hereby grants to Lessee, for the Term as defined in Section 4.1, a non-exclusive right-of-way for vehicular and pedestrian ingress and egress to the Property or the Improvements to the extent required by Lessee and as mutually agreed upon by the Parties.

25.1.2. Access to Sunlight. Lessee shall not cause or permit any interference with the Generating Facility's access to sunlight; as such access exists as of the Effective Date.

25.1.3. Exclusive Access. Lessee is granted no exclusive access to the Property.

25.2. For City

25.3. Primary Use as Parking Structure. Lessee acknowledges and agrees that the Site, including the Property, retains primary use as a public parking structure operated by the City or its assignee at City's sole discretion and with associated public and operator access.

25.4. Access for Inspection. City and City's agents shall have the right to open or enter Lessee facilities on the Property at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective City, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Property as City may deem necessary. City may at any time place on or about the Property any ordinary "For Sale" signs and City may at any time during the last one hundred twenty (120) days of the Term hereof place on or about the Property any ordinary "For Lease" signs, all without rebate of Rent or other fees, or liability to Lessee.

25.5. Security Measures. City shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Property or the Improvements. Should City, in its sole discretion, require Lessee to install such a security system associated with access to the Lessee's Improvements, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City's prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

25.6. New Locks. Lessee may install new locks on all exterior doors of the Lessee's Improvements, including exclusive equipment and facilities. Lessee shall advise City of such action and shall provide City with keys to said locks. Upon termination, Lessee shall leave new locks that shall become the Property of City.

**26. INSURANCE.**

- 26.1. Lessee's responsibility for the Property begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit "G" (Insurance Requirements) attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Property. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit "G" (Insurance Requirements). Lessee also agrees to secure renter's liability insurance.
- 26.2. Lessee shall deposit with the Lease Administrator, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, City may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.
- 26.3. City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's risk manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Property, the Lease Administrator may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the City's risk manager. City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.
- 26.4. The Lease Administrator shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of City.
- 26.5. The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Property.

**27. RESERVATION OF AVIGATIONAL EASEMENT.**

City hereby reserves for the use and benefits of the public, a right of avigation over the Properties for the passage of aircraft landing at, taking off, or operating from the adjacent airport operated by the County of Santa Clara. Lessee releases the City from all liability for noise, vibration, and any other related nuisance.

**28. EMINENT DOMAIN.**

- 28.1. If all or any part of the Properties (or the building in which the Properties are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Properties by the condemning public entity.
- 28.2. If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Properties. If the condemnation of a part of the Properties substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:
- 28.2.1. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or
  - 28.2.2. Continue to occupy the remaining Properties and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Properties, the monthly rent shall be reduced in proportion to the diminution in value of the Properties.
  - 28.2.3. Lessee shall provide City with written notice advising City of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.
- 28.3. City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to:
- 28.3.1. That portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and
  - 28.3.2. Any amount specifically designated as a moving allowance or as compensation for Lessee's personal property.

Lessee shall have no claim against the City the value of any unexpired term of this Lease.

**29. POST-ACQUISITION TENANCY.**

Lessee hereby acknowledges that Lessee was not an occupant of the Property at the time the Property was acquired by City. Lessee further understands and agrees that as a post-acquisition Lessee, Lessee is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

**30. DISPUTE RESOLUTION.**

- 30.1. Unless otherwise mutually agreed to, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- 30.2. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.
- 30.3. The costs of mediation shall be borne by the Parties equally.
- 30.4. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

**31. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.**

No official or employee of City shall be personally liable for any default or liability under this agreement.

**32. NON-DISCRIMINATION**

- 32.1. Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Property, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Palo Alto Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Palo Alto Municipal Code relating to City policy against arbitrary discrimination.
- 32.2. Human Rights Policy. In connection with all activities that are conducted upon the Properties, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the City of Palo Alto to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the city; and equal service and

protection by all public agencies of the city.”

**33. INDEPENDENT CONTRACTOR.**

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

**34. CONFLICT OF INTEREST.**

34.1. Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance under this Lease. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested:

34.1.1. Has been employed or retained to solicit or aid in the procuring of this agreement; or

34.1.2. Will be employed in the performance of this agreement without the divulgence of such fact to City.

34.2. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment.

34.3. Violation of this provision constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

**35. MEMORANDUM OF LEASE.<sup>1</sup>**

Following execution of this Lease, either party, at its sole expense, shall be entitled to record the Memorandum of Lease in the form attached hereto as Exhibit “F” (Memorandum of Lease) in the official records of Santa Clara County, which Memorandum shall be executed contemporaneously with this Lease. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

**36. ESTOPPEL CERTIFICATE.** Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing:

36.1. Certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and,

36.2. Acknowledging that there are not to Lessee’s knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective City or encumbrancer of the City Property.

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<sup>1</sup> NTD: Note to Palo Alto - Memo of Lease needs to be prepared.

**37. LIENS.**

Lessee agrees at its sole cost and expense to keep the Property free and clear of any and all claims, levies, liens, encumbrances or attachments. Notwithstanding the Generating Facility's presence as a fixture on the site, Lessee 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 on or with respect to the Generating Facility or any interest therein. Lessee also shall pay promptly before a fine or penalty may attach to the Generating Facility any taxes, charges or fees of whatever type of any payments for which Lessee is responsible.

**38. SECURITY.**

Lessee shall provide and take reasonable measures for security of the Improvements installed on the Property.

**39. NOTICES.** All notices to the Parties shall, unless otherwise requested in writing, be sent as follows:

39.1. To City:

City of Palo Alto  
Attention: Hamid Ghaemmaghami  
250 Hamilton Avenue  
Palo Alto, CA 94301  
Phone: (650) 329-2264  
Email: hamid.thaemmaghami@cityofpaloalto.org

39.2. To Lessee:

Name: Zach Rubin  
Address: 329 Middlefield Rd  
Palo Alto, CA 94301  
Phone: 650-847-1191  
Email: zrubin@komunaenergy.com

39.3. All notices may be served on one Party by the other in person, by first class mail, or by certified mail whether or not said mailing is accepted the other Party. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The Business Day the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall also be used for service of process.

**40. TIME.**

Time shall be of the essence in this Lease.

**41. AMENDMENTS.**

No alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

**42. SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

**43. SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment of any and all such subleases or subtenancies.

**44. INTEGRATED DOCUMENT.**

This Lease, including any Exhibits attached hereto, embodies the entire agreement between City and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

**45. WAIVER.**

Waiver by City of one or more conditions of performance, of an Event of Default, or of any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent Events of Default or breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

**46. SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

**47. NO CONSTRUCTION AGAINST DRAFTING PARTY**

The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

**48. GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

**49. VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

**50. COMPLIANCE WITH LAWS.**

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

**51. BROKERS.**

Each Party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall indemnify and hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom such Party has or purportedly has dealt.

**52. COUNTERPARTS**

Any number of counterparts of this Lease maybe executed and each shall have the same force and effect as the original.

**53. NO THIRD PARTY BENEFICIARIES**

Nothing in this Lease shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Lease shall not be construed as a third party beneficiary contract.

**54. SURVIVAL**

Any provision of this Lease that expressly or by implication comes into or remains in full force following the termination or expiration of this Lease, including, without limitation section 19 (Hold Harmless/Indemnification) shall survive the termination or expiration of this Lease.

**55. PREVAILING WAGE**

Lessee is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California



Labor Code. Pursuant to the provisions of Section 1772 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute this Lease from the Director of the Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the Purchasing Division’s office of the City of Palo Alto. Lessee shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates at a minimum. Lessee shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

*[SIGNATURES ON NEXT PAGE]*

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

**CITY:**

**LESSEE:**

CITY OF PALO ALTO

KOMUNA PALO ALTO LLC

By: \_\_\_\_\_  
City Manager

DocuSigned by:  
By: *Zach Rubin*  
8C7A744C2E324AE...

Its: Zach Rubin  
\_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Senior Deputy City Attorney

## **EXHIBIT “A”**

### **DEFINITIONS**

- A-1.** “275 Cambridge Garage” means the City’s parking garage facility located in Palo Alto, California at 275 Cambridge Avenue.
- A-2.** “475 Cambridge Garage” means the City’s parking garage facility located in Palo Alto, California at 475 Cambridge Avenue.
- A-3.** “Access Property” means a non-exclusive right-of-way for vehicular and pedestrian ingress and egress to the Premises to the extent required by Lessee to install, maintain, and operate the Generating Facilities, and to install the EV Chargers and Infrastructure, as mutually agreed upon by the Parties.
- A-4.** “Air Rights Parcel” has the meaning set forth in Exhibit “C” (Description of Premises) attached to this Lease.
- A-5.** “Bryant Garage” means the City’s parking garage facility located in Palo Alto, California at 445 Bryant Street.
- A-6.** “Business Day” means any day other than Saturday, Sunday, or dates the City is closed for a federal, California, or City holiday.
- A-7.** “City” means the City of Palo Alto, a California chartered Municipal Corporation and all successors and assigns.
- A-8.** “CLEAN PPA” has the meaning set forth in the Recitals of this Lease.
- A-9.** “CLEAN PPA Interconnection Agreement” means the Interconnection Agreement that Lessee must execute with City in connection with the CLEAN PPA.
- A-10.** “CLEAN Program” means the Palo Alto Clean Local Energy Accessible Now Program.
- A-11.** “Common Areas” means those areas of the Site other than the Improvements.
- A-12.** “Commercial Operation Date” means the date on which Commercial Operation of the Generating Facility begins, as specified in Exhibit “E” (Work Schedule).
- A-13.** “Construction Period” has the meaning set forth in section 5.1.2.1.2 of this Lease.
- A-14.** “Construction Period Rent” has the meaning set forth in section 5.1.2.3 of this Lease.
- A-15.** “Construction Start Date” means the date on which Lessee begins construction of the Generating Facility; or in the event that a contractor is constructing the Generating Facility on Lessee’s behalf, the date Lessee delivers to contractor the Notice to Proceed for the Generating Facility.

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### **EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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- A-16.** “Debtor” has the meaning set forth in section 23.1.4.2 of this Lease.
- A-17.** “Delay Liquidated Damages” has the meaning set forth in section 6.2.2 of this Lease.
- A-18.** “Delayed Construction Period” has the meaning set forth in section 5.1.2.1.4 of this Lease.
- A-19.** “Effective Date” has the meaning set forth in the Preamble to this Lease.
- A-20.** “Electric Vehicle Chargers and Infrastructure” or “EV Chargers and Infrastructure” means three (3) Chargepoint brand electric vehicle chargers, or an equivalent acceptable to City in its sole discretion, each with two level 2 ports capable of charging six vehicles in each of the 275 Cambridge Garage, the 475 Cambridge Garage and the Bryant Garage; and installation of wire, conduit, switchgear and any electrical capacity upgrades necessary to support an additional ten (10) electric vehicle chargers capable of charging upon full installation twenty (20) vehicles in each of the 275 Cambridge Garage, the 475 Cambridge Garage, the Bryant Garage and the Webster Garage.
- A-21.** “EV Chargers Construction Period” has the meaning set forth in Exhibit “E” (Work Schedule).
- A-22.** “Force Majeure” means (a) natural phenomena, such as storms, hurricanes, floods, lightening and earthquakes; (b) explosions or fires arising from lightening or other causes unrelated to the acts or omissions of the Lessee; (c) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (d) acts of God. Force Majeure shall not include equipment failures or acts or omissions of Lessee’s agents, suppliers or subcontractors, except to the extent such acts or omissions arise from Force Majeure. Changes in prices for electricity or solar equipment shall not constitute Force Majeure. In the event any work performed by Lessee or Lessee’s contractors results in a strike, lockout, and/or labor dispute, such strike, lockout, and/or labor dispute shall not be considered Force Majeure.
- A-23.** “Generating Facility” or “Generating Facilities” means, at times individually and others collectively, the four (4), integrated systems for the generation of electricity from solar energy with a capacity of 1.3MW to be installed, maintained, and operated by Lessee at the Property in accordance with the specifications set forth in Exhibit “D” (Improvements), consisting of, without limitation, photovoltaic panels and associated equipment including, without limitation, controls, meters, switches, connections, conduit, wires and connections, mounting substrates or supports, power inverters, metering and service equipment, and utility interconnections.
- A-24.** “Ground Floor Area” has the meaning set forth in Exhibit “C” (Description of Premises) attached to this Lease.
- A-25.** “Hazardous Materials” means Any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances”, “hazardous waste”, “hazardous chemical substance or mixture”, “imminently hazardous chemical substance or mixture”, “toxic substances,” “hazardous air pollutant”, “toxic

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pollutant” or “solid waste” in the: CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 *et seq.*, RCRA, 42 U.S.C. Sec. 6901 *et seq.*, CWA., 33 U.S.C. Sec. 1251 *et seq.*, CAA, 42 U.S.C. 78401 *et seq.*, TSCA, 15 U.S.C. Sec. 2601 *et seq.*, the Refuse Act of 1899, 33 U.S.C. Sec. 407, OSHA, 29 U.S.C. 651 *et seq.*; hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 *et seq.*, USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), California Superfund, Cal. Health & Safety Code Sec. 25300 *et seq.*, Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 *et seq.*, Porter-Cologne Act, Cal. Water Code Sec. 13000 *et seq.*, Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 *et seq.*, Proposition 65, Cal. Health and Safety Code Sec. 25249.5 *et seq.*, Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 *et seq.*, California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 *et seq.*, Air Resources Law, Cal. Health & Safety Code Sec. 39000 *et seq.*, Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, TCPA, Cal. Health and Safety Code Secs. 25208 *et seq.*, and regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules; and any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: Trichloroethylene, tetracholoethylene, perchloroethylene and other chlorinated solvents; any petroleum products or fractions thereof; Asbestos, Polychlorinated biphenyls; flammable explosives; urea formaldehyde; and radioactive materials and waste.

- A-26.** “Improvements” means all physical construction by Lessee on the Site as described more particularly in Exhibit “D”, including the Generating Facility and EV Chargers and Infrastructure described therein.
- A-27.** “In-Lieu Parking Fee” has the meaning set forth in section 6.1 of this Lease.
- A-28.** “Initial Period” has the meaning set forth in section 5.1.2.1.1 of this Lease.
- A-29.** “Initial Period Rent” has the meaning set forth in section 5.1.2.2 of this Lease.
- A-30.** “Insurance Trustee” has the meaning set forth in section 20.3.1.2 of this Lease.
- A-31.** “Lease” means this Lease Agreement between the City of Palo Alto and Komuna Palo Alto LLC, as the same may be amended from time to time.
- A-32.** “Lease Administrator” means, for City the City Manager or his/her designee and, for Lessee Mr. Zach Rubin.
- A-33.** “Lessee” means Komuna Palo Alto LLC, and any successors and assigns permitted pursuant to section 22 of this Lease.

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**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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- A-34.** “Lessee Event of Default” has the meaning set forth in Section 23.1 of this Lease.
- A-35.** “Lessor Event of Default” has the meaning set forth in Section 23.2 of this Lease.
- A-36.** “Notice to Pay Rent or Quit” has the meaning set forth in section 23.1.2 of the Lease.
- A-37.** “Operations Period” has the meaning set forth in section 5.1.2.1.5 of this Lease.
- A-38.** “Operations Period Rent” has the meaning set forth in section 5.1.2.3 of this Lease.
- A-39.** “Option Exercise Notice” has the meaning set forth in section 4.1.2.3 of this Lease.
- A-40.** “Parking Elimination Fees” has the meaning set forth in Section 6.1 of this Lease.
- A-41.** “Parking Fees” means, collectively, any one-time Parking Elimination Fees and any Delay Liquidated Damages.
- A-42.** “Permits” means all federal, state, and City permits, licenses, certificates, approvals, variances and other entitlements necessary for the installation and operation of the Improvements.
- A-43.** “Premises” means that portion of the Site(s), described more particularly in Exhibit “C” on which the Improvements (described more particularly in Exhibit “D”) shall be constructed, installed and maintained, including all installations or equipment required, as a condition of Lessee’s Permits, for the installation, operations and maintenance of the Improvements.
- A-44.** “Property” or “Properties” means the Premises, described more specifically in Exhibit “C” and Access Property, collectively.
- A-45.** “Real Property Taxes” means:
- A-45.1. All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to:
- A-45.1.1. Value, occupancy, use or possession of the Premises and/or the Improvements;
- A-45.1.2. Any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or,
- A-45.1.3. Use of the Premises, Improvements public utilities or energy within the Premises.
- A-45.2. “Real Property Taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the

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**EXHIBITS**

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Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

- A-46.** "Rent" means, collectively, the Initial Period Rent, Construction Period Rent, and the Operations Period Rent.
- A-47.** "Required Uses" has the meaning set forth in section 8.1 of this Lease.
- A-48.** "Restoration" has the meaning set forth in section 20.3.1 of this Lease.
- A-49.** "Scheduled Construction Period" has the meaning set forth in section 5.1.2.1.3 of this Lease.
- A-50.** "Security Deposit" has the meaning set forth in section 7.1 of this Lease.
- A-51.** "Site" means, collectively, the four (4) City parking garage facilities that are the subject of this Lease described more specifically in Exhibit "B" (Description of Site), including the 275 Cambridge Garage, the 475 Cambridge Garage, the Webster Garage, and the Bryant Garage.
- A-52.** "Term" has the meaning set forth in section 4.1.1.1 of this Lease.
- A-53.** "Total Rent Amount" means an annual amount of twenty thousand dollars (\$20,000.<sup>00</sup>).
- A-54.** "Transfer" has the meaning set forth in section 13.1.3.2 of this Lease.
- A-55.** "Webster Garage" means the City's parking garage facility located in Palo Alto, California at 520 Webster Street.

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**EXHIBITS**

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**EXHIBIT "B"****DESCRIPTION OF SITE**

"Site" means, collectively, the four (4) City parking garage facilities that are the subject of this Lease, including the 275 Cambridge Garage, the 475 Cambridge Garage, the Webster Garage, and the Bryant Garage:

| <b>SITE NAME</b> |                      | <b>SITE LOCATION</b>                        |
|------------------|----------------------|---|
| 1                | 475 Cambridge Garage | 475 Cambridge Avenue, Palo Alto, California |
| 2                | 275 Cambridge Garage | 275 Cambridge Avenue, Palo Alto, California |
| 3                | Webster Garage       | 520 Webster Street, Palo Alto, California   |
| 4                | Bryant Garage        | 445 Bryant Street, Palo Alto, California    |

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**EXHIBITS****LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC****Page EX-6**

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**EXHIBIT “C”**

**DESCRIPTION OF PREMISES**

“Premises” means, collectively, that portion of each of the Sites described herein on which the Generating Facility (described more particularly in Exhibit “D” (Improvements)) shall be constructed, installed and maintained, including all installations or equipment required, as a condition of Lessee’s Permits, for the installation, operations and maintenance of the Generating Facility:

| <b>PREMISES NAME</b> |                      | <b>GROUND FLOOR AREA</b>  |  | <b>AIR RIGHTS PARCEL</b>   |                           |
|----------------------|----------------------|---|--|--|---------------------------|
|                      |                      | <i>Ground floor area to allow for installation, operation and maintenance of Improvements, including the necessary support structures and equipment for the Generating Facility as reflected and described more fully in Exhibit “D” (Improvements)</i> |  | <i>Rights to use the space at the designated distance above the Ground Floor Area of the top floor level at each Site to allow for installation, operation and maintenance of Generating Facilities, as reflected and described more fully in Exhibit “D” (Improvements)</i> |                           |
|                      |                      | Loss of Parking Spaces NOT TO EXCEED  |  | TOP FLOOR LEVEL #  | AIR RIGHTS PARCEL SQ. FT. |
| 1                    | 475 Cambridge Garage | 2 spaces  |  | 2  | 28,600                    |
| 2                    | 275 Cambridge Garage | 2 spaces  |  | 2  | 27,500                    |
| 3                    | Webster Garage       | 2 spaces  |  | 6  | 29,700                    |
| 4                    | Bryant Garage        | 2 spaces  |  | 5, portion of 4  | 32,475                    |

The term “Premises” shall also include any necessary Access Property to allow for Lessee’s (a) installation, construction, maintenance and operation of the Generating Facilities; and (b) construction and installation of the EV Chargers and Infrastructure described in Exhibit “D” (Improvements), which upon installation will be solely owned, operated and maintained by City.

**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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**EXHIBIT "D"**

**IMPROVEMENTS**

Lessee agrees to provide City with diagrams and detailed description of the Improvements, including the Generating Facilities and the EV Chargers and Infrastructure in accordance with the following schedule:

1. Initial diagrams/descriptions at the planning/entitlement stage;
2. Updated diagrams/descriptions at the plan check phase; and
3. Final diagrams within four (4) days of Lessee's receipt of its Building Permit from City.

Upon acceptance by City, each submission of such diagrams and descriptions from Lessee to City shall be incorporated into this lease, and supersede any prior submission.

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**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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**EXHIBIT “E”**

**WORK SCHEDULE**

**WORK SCHEDULE FOR GENERATING FACILITIES**

Within ten (10) days of City’s issuance of a building permit to Lessee, Lessee shall provide City with an updated version of the Work Schedule for Generating Facilities to be signed by both City and Lessee. The updated Work Schedule for Generating Facilities shall be substantially in the form of this Exhibit, mutually agreeable to City and Lessee, shall identify with specificity the start and end dates of the Scheduled Construction Period and areas of any Site to which the City will lose or have limited access over the course of the Scheduled Construction Period. Such updated Work Schedule shall supersede this Work Schedule for Generating Facilities

| SITE NAME |                      | SCHEDULED CONSTRUCTION PERIOD  | DESCRIPTION OF SITE AREAS WITH LOST OR LIMITED ACCESS  |
|-----------|----------------------|--|--|
|           |                      | <i>Time period from Construction Start Date to Commercial Operation Date</i> |  |
| 1         | 475 Cambridge Garage | 6 weeks  | Level 2 completely closed to third party and City pedestrian and vehicle traffic for duration of Scheduled Construction Period                           |
| 2         | 275 Cambridge Garage | 6 weeks  | Level 2 completely closed to third party and City pedestrian and vehicle traffic for duration of Scheduled Construction Period                           |
| 3         | Webster Garage       | 6 weeks  | Level 6 completely closed to third party and City pedestrian and vehicle traffic for duration of Scheduled Construction Period                           |
| 4         | Bryant Garage        | 6 weeks  | Level 5, and a portion of Level 4 completely closed to third party and City pedestrian and vehicle traffic for duration of Scheduled Construction Period |

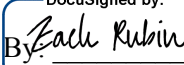
**CITY:**

**LESSEE:**

CITY OF PALO ALTO

KOMUNA PALO ALTO LLC

By: \_\_\_\_\_  
City Manager

DocuSigned by:  
By:   
8CZA744C2E524AE  
Zach Rubin  
Its: \_\_\_\_\_

**WORK SCHEDULE FOR EV CHARGERS AND INFRASTRUCTURE**

Within ten (10) days of City’s issuance of a building permit to Lessee, Lessee shall provide City with an updated version of the Work Schedule for EV Chargers and Infrastructure to be signed by both City and Lessee. The updated Work Schedule for EV Chargers and Infrastructure shall be substantially in the form of this Exhibit, shall be mutually agreeable to City and Lessee, shall identify with specificity the start and end dates of the EV Charger Construction Period, any areas of any Site to which the City will lose or have limited access over the course of the Scheduled Construction Period, any additional compensation (if any) due from Lessee to City for loss or limitation of access. Such updated Work Scheduled shall supersede this Work Schedule for EV Chargers and Infrastructure.

| SITE NAME |                      | EV CHARGER CONSTRUCTION PERIOD   | DESCRIPTION OF SITE AREAS WITH LOST OR LIMITED ACCESS |
|-----------|----------------------|--|---|
|           |                      | <i>Start and Completion Date for Lessee installation of EV Chargers and Infrastructure</i> |   |
| 1         | 475 Cambridge Garage | 1 week   |   |
| 2         | 275 Cambridge Garage | 1 week   |   |
| 3         | Webster Garage       | 1 week   |   |
| 4         | Bryant Garage        | 1 week   |   |

**CITY:**

**LESSEE:**

CITY OF PALO ALTO

KOMUNA PALO ALTO LLC

By: \_\_\_\_\_  
City Manager

DocuSigned by:  
By: *Zach Rubin*  
8C7A744C2E324AE...  
Zach Rubin  
Its: \_\_\_\_\_

**EXHIBIT "F"**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

*[City of Palo Alto  
Administrative Services Department, Real Estate Division  
250 Hamilton Avenue  
Palo Alto, CA 94303]*

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("Lessor") and KOMUNA PALO ALTO LLC, a Delaware limited liability company ("Lessee"), with respect to that certain Lease Agreement dated \_\_\_\_\_, 2016 ("Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor leases to Lessee and Lessee leases from Lessor a portion of each of the parking facilities known as the 275 Cambridge Garage, the 475 Cambridge Garage, the Bryant Garage and the Webster Garage, located in the City of Palo Alto, County of Santa Clara, California, for the purpose of installing constructing, operating and maintaining a solar powered electric generating facilities on each facility (the "Generating Facilities") to be owned, maintained and operated by Lessee, all subject to the terms and conditions more fully set forth in the Lease.

Pursuant to the Lease, Lessor leases to Lessee and Lessee leases from Lessor a portion of each of the parking facilities known as the 275 Cambridge Garage, the 475 Cambridge Garage and the Bryant Garage, located in the City of Palo Alto, County of Santa Clara, California, for the purpose of installing three (3) electric vehicle chargers capable of charging six vehicles, and a portion of each of the parking facilities known as the 275 Cambridge Garage, the 475 Cambridge Garage, the Bryant Garage and the Webster Garage, located in the City of Palo Alto, County of Santa Clara, California, for the purpose of installing wire, conduit, switchgear and any electrical capacity upgrades necessary to support an additional ten (10) electric vehicle chargers capable of charging upon full installation twenty (20) vehicles; all of which upon installation will be owned, maintained and operated by City; and all subject to the terms and conditions more fully set forth in the Lease.

The Lease shall commence on \_\_\_\_\_, and shall end on the date that is twenty-five (25) years after the commencement of commercial operation date of the all of the Generating Facilities. Pursuant to Section 4.3 of the Lease, Lessor has the right to purchase all Generating Facilities or one or

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**EXHIBITS**  
**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

more individual Generating Facilities (“Buy-Out Option”) on the date that is ten (10), fifteen (15), twenty (20) and twenty-five (25) years after commencement of commercial operation of the Generating Facilities on the first parking facility.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

Lessor and Lessee desire to have this Memorandum recorded in the Official Records of Santa Clara County, California, in order to put interested parties on notice of the Buy-Out Option.

In Witness Whereof, the parties hereto have executed this Memorandum on the day and year first written above.

LESSOR:

CITY OF PALO ALTO,  
a California chartered municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Senior Deputy City Attorney

LESSEE:

KOMUNA PALO ALTO LLC,  
a Delaware limited liability company

DocuSigned by:  
*Zach Rubin*  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA )

COUNTY OF SANTA CLARA )

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

Exhibit A

475 Cambridge Garage

275 Cambridge Garage

Webster Garage

Bryant Garage

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**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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**EXHIBIT "G"****INSURANCE REQUIREMENTS****STANDARD INSURANCE REQUIREMENTS**

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

**Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

| <u>POLICY</u>   | <u>MINIMUM LIMITS OF LIABILITY</u>                         |
|---|--|
| (1) Commercial General Liability<br>injury, personal injury and property damage | \$1,000,000 per each occurrence for bodily                 |
| (2) Automobile Liability<br>Including Owned, Hired and<br>Non-Owned Automobiles | \$ 1,000,000 Combined Single Limit                         |
| (3) Workers' Compensation<br>Employers Liability<br>disease                     | Statutory<br>\$1,000,000 per accident for bodily injury or |
| (4) Lessee's Property Insurance   |  |

**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the Premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
2. Include a waiver of all rights of subrogation against the City and the members of the City Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.
3. Name the City of Palo Alto as a loss payee on the property policy.

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**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

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**EXHIBITS**

**LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC**

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**EXHIBIT "H"**  
**FORM OF CLEAN PPA**

**POWER PURCHASE AGREEMENT**  
**ELIGIBLE RENEWABLE ENERGY RESOURCE**  
**(Palo Alto Clean Local Energy Accessible Now Program)**

This Power Purchase Agreement - Eligible Renewable Energy Resource, dated, for convenience, \_\_\_\_\_, 20\_\_ (the "Effective Date"), is entered into by and between the CITY OF PALO ALTO, a California chartered municipal corporation, and \_\_\_\_\_, a \_\_\_\_\_ corporation (individually, a "Party" and, collectively, the "Parties").

**RECITALS**

1. The Buyer has adopted and implemented its CLEAN Program, which allows an owner of a qualifying electric generation system to sell to the Buyer the power output of a small-scale distributed generation Eligible Renewable Energy Resource, subject to the CLEAN Program's rules and requirements.

2. The Seller owns or operates and desires to interconnect its Facility in parallel with Buyer's Distribution System and sell the Energy produced by its Facility, net of Station Service Load, directly to the Buyer in furtherance of the CLEAN Program.

3. The Parties do not intend this Agreement to constitute an agreement by the Buyer to provide retail electrical service to the Seller.

4. The Parties wish to enter into a power purchase agreement for the sale and purchase of the Output of the Facility. The Parties will enter into a separate "Interconnection Agreement" in connection with this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals and the following covenants, terms and conditions, the Parties agree, as follows:

**AGREEMENT**

**1.1 DEFINITIONS**

The initially capitalized terms, whenever used in this Agreement, have the meanings set forth below, unless they are otherwise herein defined. The terms "include," "includes," and "including," when used in this Agreement, shall mean, respectively, "include, without limitation," "includes, without limitation" and "including, without limitation."

**"Agreement"** means this Power Purchase Agreement – Eligible Renewable Energy Resource between the Buyer and the Seller.

**"Business Day"** means any day except a Saturday, Sunday, or a day that the City observes as a regular holiday under Palo Alto Municipal Code section 2.08.100(a).

**"Buyer"** refers to the City of Palo Alto, California, with a principal place of business at 250 Hamilton Avenue, Palo Alto, California 94301.

**"Buyer's Distribution System"** means the wires, transformers, and related equipment used by the Buyer to deliver electric power to the Buyer's retail customers, typically at sub-transmission level voltages or lower.

**"CAISO"** means the California Independent System Operator Corporation, or successor entity.

**"CAISO Tariff"** means the CAISO FERC Electric Tariff, as amended.

**"Capacity"** means the ability of a generator at any given time to produce Energy at a specified rate, as

measured in megawatts (“MW”) or kilowatts (“kW”), and any reporting rights associated with it.

“**Capacity Attributes**” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the Contract Capacity of the Facility to produce Energy or ancillary services, including contributions towards Resource Adequacy (including those requirements defined in Section 40 of the CAISO Tariff) or reserve requirements (if any), and any other reliability or power attributes.

“**CEC**” means the California Energy Resources Conservation and Development Commission, or successor agency.

“**Certificate of RPS Eligibility**” means a certificate issued by the CEC as evidence of RPS Certification of the Facility.

“**City**” means the government of the City of Palo Alto, California.

“**CLEAN Program**” refers to the Palo Alto Clean Local Energy Accessible Now Program, a renewable energy program established by the City by adoption of resolution number 9512, dated 5/27/15, of the Palo Alto City Council, whereby the Buyer will purchase from the Seller the Output of Eligible Renewable Energy Resources that meet specified criteria set forth in the City’s applicable ordinances and resolutions.

“**Commercial Operation**” means the period of operation of the Facility, once the Commercial Operation Date has occurred.

“**Commercial Operation Date**” means the date specified in the Commercial Operation Date Confirmation Letter, which the Parties execute and exchange in accordance with this Agreement.

“**Contract Capacity**” means the installed electrical Capacity available upon the Commercial Operation Date of the Facility in an amount, as specified in Exhibit “PPA-A.” “Contract Capacity” is measured at the Buyer’s revenue meter at the Delivery Point and is net of any Station Service Loads, any applicable Facility step-up transformer losses, and distribution losses on Buyer’s Distribution System up to the Delivery Point.

“**Contract Price**” means the price paid by the Buyer to the Seller for the Output generated at the Facility and received by the Buyer, as set forth in Exhibit “PPA-A.”

“**CPUC**” means the California Public Utilities Commission, or successor agency.

“**Delivery Point**” means the point of interconnection to Buyer’s Distribution System, where the Buyer accepts title to the Output.

“**Delivery Term**” has the meaning set forth in Section 14.2 hereof.

“**Eligible Renewable Energy Resource**” means an electric generating facility that is defined and qualified as an “eligible renewable energy resource” under California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25471, respectively, as amended.

“**Energy**” means electrical energy generated from the Facility and delivered to Buyer’s Distribution System with the voltage and quality required by the Buyer, and measured in megawatt-hours (“MWh”) or kilowatt-hours (“kWh”), as metered at the Delivery Point.

“**Facility**” means the qualifying renewable energy generation equipment and associated power conditioning and interconnection equipment that deliver the Output to the Buyer at the Delivery Point.

“**FERC**” means the Federal Energy Regulatory Commission, or successor agency.

**“Forced Outage”** means an unplanned outage of one or more of the Facility’s components that results in a reduction of the ability of the Facility to produce Capacity.

**“Force Majeure”** means an event or circumstance, which prevents a Party from performing its obligations under this Agreement, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which by the exercise of due diligence is unable to overcome or cause to be avoided. “Force Majeure” shall include: (a) An act of nature, riot, insurrection, war, explosion, labor dispute, fire, flood, earthquake, storm, lightning, tidal wave, backwater caused by flood, act of the public enemy, terrorism, or epidemic; (b) Interruption of transmission or generation services as a result of a physical emergency condition (and not congestion-related or economic curtailment) not caused by the fault or negligence of the Party claiming Force Majeure and reasonably relied upon and without a reasonable source of substitution to make or receive deliveries hereunder, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, restraint by court order or other public authority or governmental agency, actions taken to limit the extent of disturbances on the electrical grid; or (c) Other similar causes beyond the control of the Party affected, which causes such Party could not have avoided by the exercise of due diligence and reasonable care. A Party's financial incapacity, the Seller’s ability to sell the Output at a more favorable price or under more favorable conditions, or the Buyer’s ability to acquire the Output at a more favorable price or under more favorable conditions or other economic reasons shall not constitute an event of Force Majeure. “Force Majeure” does not include a Forced Outage to the extent such event is not caused or exacerbated by an event of Force Majeure, as described above, and does not include the Seller’s inability to obtain financing, permits, or other equipment and instruments necessary to plan for, construct, or operate the Facility.

**“Good Utility Practice”** means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the western United States, similar to the Facility, 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. The Seller acknowledges that its use of Good Utility Practice does not exempt it from performing any of its obligations arising under this Agreement. “Good Utility Practice” includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding paragraph that comply with manufacturers’ warranties, restrictions in this Agreement, the interconnection requirements of Buyer, the requirements of governmental authorities, and WECC and NERC standards. “Good Utility Practice” also includes the taking of reasonable steps to ensure that:

- (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and emergencies whether caused by events on or off the Facility’s site;
- (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed; and
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the connecting utility’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Facility site and under both normal and emergency conditions.

**“Green Attributes”** refers to the definition set forth in the Standard Terms and Conditions, Appendix A-2, as amended, Decision D.07-02-011, as modified by D.07-05-057, of the CPUC, which incorporates the definition of “Environmental Attributes” set forth in the Standard Terms and Conditions, Appendix A-1, as amended, D. 04-06-014. “Green Attributes” includes any and all credits, benefits, emissions reductions, environmental air quality credits, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional energy generation, whether existing now or arising in the future. “Green Attributes” includes RECs, as well as (1) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides (“SOx”), nitrogen oxides (“NOx”), carbon monoxide (“CO”) and other pollutants; (2) 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 (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights and RECs. “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 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 kWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. “Green Attributes” do not include (i) any Energy, Capacity, reliability, or other power attributes of the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, grants, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered, used or created by the Facility for compliance with or sale under local, state, or federal operating and/or air quality permits or programs. If the Facility is a biomass or landfill facility and the Seller receives any tradable Green Attributes based on the Facility’s greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, the Seller shall provide the Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility. “Green Attributes” includes any other environmental credits or benefits recognized in the future and attributable to Energy generated by the Facility during the Term that may not be represented by Green Tag Reporting Rights or RECs, unless otherwise excluded herein. Any Green Attributes provided under this Agreement shall be documented by RECs, or any other representation of the environmental benefits of the Output, the monthly cumulative total of which shall be provided to the Buyer, as specified herein.

**“Interconnection Agreement”** refers to the agreement between the Buyer and the Seller, specific to the interconnection of the Facility to Buyer’s Distribution System.

**“NERC”** means the North American Electric Reliability Corporation, or successor organization.

**“NCPA”** means Northern California Power Agency, a California joint action agency, or successor agency.

**“Output”** means all Capacity associated with Contract Capacity and associated Energy made available from the Facility, as well as any Capacity Attributes, Green Attributes, or other attributes existing now or in the future associated with Contract Capacity and/or associated Energy. “Output” does not include production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, grants, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Planned Outage”** means an outage, scheduled in advance, of one or more of the Facility’s components that results in a reduction of the ability of the Facility to produce Capacity.

“**Pre-Certification Price**” means the contract price to be paid for all Energy delivered to the Buyer prior to the RPS Certification Date, as specified in Exhibit “PPA-A”.

“**Renewable Energy Credit**” or “**REC**” has the meaning set forth in Section 399.12(h)(1) and (2) of the California Public Utilities Code, and includes a certificate of proof that one unit of electricity was generated by an Eligible Renewable Energy Resource. Currently, RECs are used to convey all Green Attributes associated with electricity production by a renewable energy resource. RECs are accumulated on a kWh basis and one REC represents the Green Attributes associated with the generation of 1 MWh (1,000 kWhs) from the Facility. For purposes of this Agreement, the term REC shall be synonymous with the term Green Tag, green ticket, bundled or unbundled renewable energy credit, tradable renewable energy certificates, or any other term used to describe the documentation that evidences the renewable and Green Attributes associated with electricity production by an Eligible Renewable Energy Resource.

“**Renewables Portfolio Standard**” or “**RPS**” means the standard adopted by the State of California pursuant to Senate Bill 2 1st Extraordinary Session (SBX1 2, Chapter 1, Statutes 2011-12), and California Public Utilities Code Sections 399.11 through 399.31, inclusive, as may be amended, setting minimum renewable energy targets for local publicly owned electric utilities.

“**Reservation Deposit**” means the monetary deposit submitted by the Seller (or the Facility sponsor on behalf of the Seller) to secure a reservation of the CLEAN Program’s prices. The Reservation Deposit is set forth in Exhibit “PPA-A.”

“**Resource Adequacy**” means a requirement by a governmental authority or in accordance with its FERC-approved tariff, or a policy approved by a local regulatory authority, that is binding upon either Party and that requires that Party to procure a certain amount of electric generating capacity.

“**RPS Certification**” means certification by the CEC that the Facility qualifies as an Eligible Renewable Energy Resource for RPS purposes, and that all Energy produced by the Facility qualifies as generation from an Eligible Renewable Energy Resource, as evidenced by a Certificate of RPS Eligibility.

“**RPS Certification Date**” means the date on which the RPS Certification begins, as specified in the Certificate of RPS Eligibility.

“**Seller**” means \_\_\_\_\_ with a principal place of business at \_\_\_\_\_.

“**Station Service Load**” means the electrical loads associated with the operation and maintenance of the Facility, which may at times be supplied from the Facility’s Energy.

“**Term**” has the meaning set forth in Section 14.1 hereof.

“**WECC**” means the Western Electricity Coordinating Council, the regional entity responsible for coordinating and promoting regional bulk electric system reliability in the Western Canada and the United States, or any successor organization.

**2.0 SELLER’S GENERATING FACILITY, PURCHASE PRICE AND PAYMENT**

2.1 Facility. This Agreement governs the Buyer’s purchase of the Output from the Facility, as described in Exhibit “PPA-A.” The Seller shall not modify the Facility to increase or decrease the Contract Capacity after the Commercial Operation Date.

2.2 Products Purchased. During the Delivery Term, the Seller shall sell and deliver, or cause to be delivered, and the Buyer shall purchase and receive, or cause to be received, the Output from the Facility. The Seller shall not have the right to procure the Output from sources other than the Facility for sale or delivery to the Buyer under this Agreement or to substitute the Output.



2.3 Delivery Term. The Delivery Term shall commence on the Commercial Operation Date under this Agreement, and shall continue for an uninterrupted period of [twenty (20) or twenty-five (25)] years. This period will commence on the first day of the calendar month immediately following the Commercial Operation Date. As evidence of the Commercial Operation Date, the Parties shall execute and exchange the “Commercial Operation Date Confirmation Letter,” attached hereto as Exhibit “PPA-B.” The Commercial Operation Date shall be the date on which the Parties acknowledge, in writing, that the Facility starts operating and is otherwise in compliance with applicable interconnection and system protection requirements, including the final approvals by the City’s building department official.

2.4 Payment for Products Purchased.

2.4.1 Deliveries Prior to RPS Certification Date. Once the Facility has achieved Commercial Operation, if the CEC has not issued a Certificate of RPS Eligibility for the Facility or the Facility has not been registered with the appropriate entity for the tracking of Green Attributes, the Buyer will pay the Seller for the Output by multiplying the Pre-Certification Price by the quantity of Energy.

2.4.2 Deliveries After RPS Certification Date. Once the Facility has achieved Commercial Operation, the CEC has issued a Certificate of RPS Eligibility for the Facility, and the Facility has been registered with the appropriate entity for the tracking of Green Attributes, the Buyer shall pay the Seller for all Output on or after the RPS Certification Date by multiplying the Contract Price by the quantity of Energy.

2.4.3 True-up Upon Issuance of Certificate of RPS Eligibility. Once the Facility has achieved Commercial Operation, the CEC has issued a Certificate of RPS Eligibility for the Facility, and the Facility has been registered with the appropriate entity for the tracking of Green Attributes, the Buyer will pay the Seller an amount equal to the difference between the Contract Price and the Pre-Certification Price for the Output (a) that was delivered on or after the RPS Certification Date and (b) for which the Seller has already received payment at the Pre-Certification Energy Price.

2.4.4 Energy in Excess of Contract Capacity. The Seller shall not receive payment for any Energy or Green Attributes delivered in any hour to the Buyer in excess of the following amount of energy (in kilowatt-hours): 110% of the Contract Capacity (in kilowatts) multiplied by one hour. Any payment in excess of this amount shall be refunded to the Buyer, on demand.

2.5 Billing. The Buyer shall pay the Seller by check or electronic funds transfer, on a monthly basis, within thirty (30) days of the meter reading date.

2.6 Title and Risk of Loss. Title to and risk of loss related to the Output shall be transferred from the Seller to the Buyer at the Delivery Point. The Seller warrants that it will deliver to the Buyer the Output free and clear of all liens, security interests, claims, encumbrances or any interest therein or thereto by any person, arising prior to the Delivery Point.

2.7 No Additional Incentives. The Seller warrants that it has not received any other incentives funded by the Buyer’s ratepayers and it further agrees that, during the Term, it shall not seek additional compensation or other benefits from the Buyer pursuant to the following programs of the Buyer: (a) Photovoltaic (PV) Partners Program; (b) Power from Local Ultra-Clean Generation Incentive (PLUG-In) Program; or (c) other similar programs that are or may be funded by the Buyer’s ratepayers.

### **3.0 RPS CERTIFICATION; GREEN ATTRIBUTES**

3.1 CEC Certification. The Seller, at its own cost and expense, shall obtain the RPS Certification within six (6) months of the Commercial Operation Date. The Seller shall maintain the RPS Certification at all times during the Delivery Term. The foregoing provision notwithstanding, the Seller shall not be in breach of this Agreement and the Buyer shall not have the right to terminate this Agreement, if the Seller's failure to obtain or maintain the RPS Certification is due to a change in California law, occurring after the Commercial Operation Date, so long as the Seller has used commercially reasonable efforts to obtain and maintain the RPS Certification and the Seller's actions or omissions did not contribute to its inability to obtain and maintain the RPS Certification.

3.2 Obligation to Deliver Green Attributes. The Seller shall sell and deliver to the Buyer, and the Buyer shall buy and receive from the Seller, all right, title, and interest in and to Green Attributes associated with Energy, produced by the Facility and delivered to the Buyer at the Delivery Point, whether now existing or that hereafter come into existence during the Term, except as otherwise excluded herein; provided, the Buyer shall not be obligated to purchase and pay the Seller for any Green Attributes associated with any amount of the Output, that is generated by any fuel which is not renewable and which cannot be counted for the purpose of the production of Green Attributes. The Seller agrees to sell and make all such Green Attributes available to the Buyer to the fullest extent allowed by applicable law, in accordance with the terms and conditions of this Agreement. The Seller warrants that the Green Attributes provided under this Agreement to the Buyer shall be free and clear of all liens, security interests, claims and encumbrances.

3.3 Conveyance of Green Attributes. The Seller shall provide Green Attributes associated with the Facility, which shall be documented and conveyed to the Buyer in accordance with the procedure described in Exhibit "PPA-D."

3.4 Additional Evidence of Green Attributes Conveyance. At the Buyer's request, the Seller shall provide additional reasonable evidence to the Buyer or to third parties of the Buyer's right, title, and interest in the Green Attributes and any other information with respect to Green Attributes, as may be requested by the Buyer.

3.5 Modification of Green Attributes Conveyance Procedure. The Buyer may unilaterally modify Exhibit "PPA-D" in order to reflect changes necessary in the Green Attributes conveyance procedures, so that the Buyer may be able to receive and report the Green Attributes, purchased under this Agreement, as belonging to the Buyer.

3.6 Reporting of Ownership of Green Attributes. The Seller shall not report to any person or entity that the Green Attributes sold and conveyed to the Buyer belong to any person other than the Buyer. The Buyer may report under any applicable program that Green Attributes purchased by the Buyer hereunder belong to it.

3.7 Greenhouse Gas Emissions. The Seller shall comply with any laws and/or regulations regarding the need to offset emissions of GHGs by delivering to the Buyer the Energy from the Facility with a net zero GHG impact.

### **4.0 CONVEYANCE OF CAPACITY ATTRIBUTES**

4.1 Conveyance of Resource Adequacy Capacity. The Seller shall not report to any person or entity that the Resource Adequacy Capacity, as defined in the CAISO Tariff) associated with the Facility, if any, belongs to a person other than the Buyer, which may report that Resource Adequacy Capacity purchased hereunder belongs to it to fulfill the Resource Adequacy requirements, as defined in Section 40 of the CAISO Tariff, as amended, or any successor program. The Seller shall take those actions described in Section 6.0 hereof, as applicable, to secure recognition of Resource Adequacy Capacity by the CAISO.

4.2 Conveyance of Other Capacity Attributes. In addition to the obligations imposed on the

Seller under Section 4.1, the Seller will undertake any and all actions reasonably needed to enable the Buyer to effect the recognition and transfer of any Capacity Attributes in addition Resource Adequacy, to the extent that such Capacity Attributes exist now or will exist in the future; provided, if such actions require any actions beyond the giving of notice by the Seller, then the Buyer shall reimburse all out-of-pocket costs and charges of such actions.

4.3 Reporting of Ownership of Capacity Attributes. The Seller shall not report to any person or entity that the Capacity Attributes sold and conveyed to the Buyer belong to any person other than the Buyer. The Buyer may report under any such program that such Capacity Attributes purchased hereunder belong to it.

## 5.0 METERING AND OPERATIONS

5.1 Timing of Outages. The Seller may not schedule or take any Planned Outage from 12:00 p.m. through 7:00 p.m. Pacific Time during the months of June through October.

### 5.2 Outage Reporting.

5.2.1 Buyer Request. The Seller is not required to report any Planned Outage or Forced Outage, unless the Buyer first submits a written request to the Seller to commence Outage reporting. Upon receipt of such a request, the Seller shall report all subsequent Planned Outages and the Forced Outages according to the procedures described in subsections 5.2.2 and 5.2.3, and shall continue such reporting until (a) the termination of this Agreement for any reason, or (b) the Buyer subsequently provides written notice to the Seller that the Seller may cease such reporting in the future.

5.2.2 Planned Outage Notifications. The Seller shall notify the Buyer at least 72 hours in advance of any Planned Outage that would result in a reduction in the effective Output of the Facility during the period over which the Planned Outage is scheduled. Notification shall be provided by e-mail to the e-mail address (or addresses) set forth in Exhibit "PPA-F."

5.2.3 Forced Outage Notifications. Within 24 hours of the occurrence of a Forced Outage of the Facility that impacts the ability of the Facility to produce Energy, the Seller shall notify the Buyer of the Forced Outage, including the Capacity of the Facility that is impacted, and the expected duration of the Forced Outage. Within 24 hours of the return of the Facility to service following the Forced Outage, the Seller shall notify the Buyer of the return-to-service details. Notification shall be made by e-mail to the address (or addresses) set forth in Exhibit "PPA-F."

5.3 Metering. The Buyer shall furnish and install one or more standard watt-hour meters to read Energy generated by the Facility, and it will charge a meter fee to the Seller to cover the costs associated with the meter's purchase and installation. As requested, the Seller shall provide and install a meter socket in accordance with the Buyer's metering standards. The Buyer reserves the right to install additional metering equipment at its sole cost and expense.

## 6.0 PARTICIPATING GENERATORS

6.1 Applicability. This Section 6.0 shall apply if the Facility meets the definition of a "Participating Generator," as may be defined by the CAISO Tariff. This Section 6.0 shall not apply if the definition applies to the Facility only upon the election by the Seller. For the purposes of this Section 6.0, all special terms not otherwise defined in Section 1.0 are defined in the CAISO Tariff.

6.2 Participating Generator Agreement. The Buyer will notify the CAISO of the Seller's interconnection to Buyer's Distribution System. If the CAISO requires it, the Seller, at its own expense, shall negotiate and enter in to two contracts, a "Participating Generator Agreement" and a "Meter Services Agreement for CAISO Metered Entities," with the CAISO.

6.3 Scheduling Coordination. If the CAISO requires the Seller to enter in to a Participating Generator Agreement, then the Seller shall designate NCPA as the Buyer's scheduling coordinator. The Buyer, acting in its sole discretion, may replace NCPA as the scheduling coordinator for the Facility. If NCPA ceases to be the scheduling coordinator for the Facility and the Buyer has not, upon fourteen (14) days' prior written notice of inquiry from the Seller, appointed a replacement scheduling coordinator, then the Seller shall have the right to appoint a replacement scheduling coordinator on the Buyer's behalf. Thereafter, the Buyer shall enter into all reasonable and appropriate agreements with such replacement scheduling coordinator at its own costs.

6.4 Scheduling Procedure. The Buyer may require the Seller to provide the Buyer with Energy forecasts on a periodic basis, as may be necessary for the Buyer to account for expected Facility generation in its daily power scheduling process. The requirements are set forth in Exhibit "PPA-C."

6.5 Modification of Scheduling and Outage Notification Procedure. The Buyer may unilaterally modify Exhibit "PPA-C" to reflect changes necessary in the scheduling and Outage notification procedures. The Buyer shall give the Seller reasonable notice of any such changes.

6.6 Provision of Other Equipment. If the Seller is required to enter into a Participating Generator Agreement with the CAISO, then the Seller, at its own cost and expense, shall provide and maintain data transmission-grade phone line and telecommunications equipment at the meter location that complies with applicable requirements of the CAISO, the Buyer, and NCPA. Any meter installed by the Seller shall comply at all times with the CAISO's metering requirements. If the Seller fails to provide or maintain any such required equipment or data connection, then the Buyer shall acquire, install and maintain the same at the Seller's sole cost and expense.

6.7 Designation as Resource Adequacy Resource. The Buyer may submit a written request to the Seller to obtain the CAISO's designation of the Facility as a Resource Adequacy Resource. Upon receipt of such request, the Seller shall provide such information and undertake such steps as may be required by the CAISO in order to complete such an assessment. If the Buyer makes such a request, then the Buyer shall be responsible for the following: (1) any costs charged to the Seller by the CAISO as a condition of applying for or receiving designation as a Resource Adequacy Resource, including any deposits required during the study process or the cost of any related studies or deliverability assessments performed by the CAISO; (2) the capital, installation, and maintenance costs of any additional equipment required by the CAISO as a condition of receiving designation as a Resource Adequacy Resource; (3) the costs of any Network Upgrades, as defined in the CAISO Tariff, as may be required by the CAISO, provided, the Buyer shall receive any subsequent repayments from the CAISO or the Participating Transmission Owner related to such upgrades; and (4) any charges or penalties assessed by the CAISO as a consequence of the Facility's designation as a Resource Adequacy Resource.

6.8 CAISO Charges. The Buyer shall be solely responsible for paying all costs and charges associated with the receipt of Energy under this Agreement, at the Delivery Point, and for the transmission and delivery of Energy from the Delivery Point to any other point downstream of the Delivery Point, including transmission costs and charges, competition transition charges, applicable control area service charges, transmission congestion charges, inadvertent energy flows, any other CAISO charges related to the transmission of such Energy by the CAISO and any charge assessed or collected in the future pursuant to any utility tariff or rate schedule, however defined, for transmission or transmission-related service rendered by or for any transmission-owning or operating entity. The Seller will undertake any and all actions reasonably needed to allow the Buyer to comply with any obligations, and minimize any potential liability, under the CAISO tariff. If and to the extent that the Seller fails to comply with the notice provision in Exhibit "PPA-C," concerning Outages, or with its obligations as outlined in the previous sentence, the Seller shall be wholly responsible for all imbalances, deviations, or any other CAISO charges or penalties associated with such Outage or other CAISO Tariff obligation.

6.9 Inclusion in Metered Subsystem. At the option of the Buyer, the Facility may be included within NCPA's metered sub-system in connection with the scheduling of power over the CAISO grid and related functions; provided, however, that such inclusion shall have no adverse effect on the Facility's operations or the Seller (or any such effect shall be fully mitigated by the Buyer). The Seller will undertake any and all actions reasonably needed to allow the Buyer to comply with any obligations, and

minimize any potential liability, under the CAISO Tariff; provided, that if such actions require any actions beyond the giving of notice to be provided by the Buyer, then the Buyer shall reimburse the Seller for all out-of-pocket costs and charges of such actions.

## **7.0 COMMERCIAL OPERATION DATE; REFUND OF RESERVATION DEPOSIT**

7.1 Commercial Operation Date. The Facility shall achieve Commercial Operation by the Commercial Operation Date deadline (the “Deadline”), which is one (1) year from the Effective Date.

7.2 Reservation Deposit. The Buyer acknowledges that, as of the Effective Date or other date established by the Buyer, the Seller has provided the Reservation Deposit to the Buyer.

7.2.1 If the Commercial Operation Date occurs on or prior to the Deadline, the Buyer shall refund to the Seller the Reservation Deposit without interest.

7.2.2 If the Commercial Operation Date commences within seventy (70) days of the Deadline, the Seller, as liquidated damages and not as a penalty, shall relinquish its claim to a ten percent (10%) portion of the amount of the Reservation Deposit for every full week transpiring between the Deadline and the Commercial Operation Date, but the total amount to be relinquished to the Buyer shall not exceed 100% of the Reservation Deposit.

7.2.3 If the Facility has not achieved Commercial Operation within seventy (70) days of the Deadline, then the Buyer may terminate this Agreement without liability of either Party to the other Party by giving written notice of termination to the Seller.

7.2.4 If the Seller gives notice of termination to terminate the Agreement before Commercial Operation occurs, then the Buyer shall refund a percentage of the Reservation Deposit equal to the following: the percentage to be refunded will equal  $A/B$ , where A equals the number of days between the date of the Seller’s notice of termination, received by the Buyer, and the Deadline, and B equals the number of days between the Effective Date and the Deadline.

7.3 Return of Reservation Deposit. The Buyer shall return to the Seller the Reservation Deposit, without interest, in the event that (a) the Buyer furnishes written notice of the costs of interconnection (defined in the Interconnection Agreement to include the costs related to the Interconnection Facilities and Distribution Upgrades) to the Seller and (b) within thirty (30) days of receipt of the notice regarding costs of interconnection, the Seller provides the Buyer with written notice that the Seller does not intend to sign the Interconnection Agreement and does intend to proceed with the project.

## **8.0 REPRESENTATION AND WARRANTIES; COVENANTS**

8.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

8.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

8.1.2 The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

8.1.3 This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

8.1.4 It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

8.1.5 There is not pending or, to its knowledge, threatened against it or any of its affiliates, if any, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and

8.1.6 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

8.2 General Covenants. Each Party covenants that, during the Term:

8.2.1 It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

8.2.2. It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

8.2.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

8.3 Covenant by Seller. The Seller covenants that, during the Term:

8.3.1 If the Eligible Renewal Energy Resource or the Facility is considered an ‘eligible qualifying facility’ under applicable law and has a net power production capacity of greater than one (1) megawatt, then the Seller covenants and agrees that, within thirty (30) days of the Effective Date or longer period allowed by law, it will complete and file Form No. 556 or other similar form with FERC as the same may be required by law.”

## 9.0 GENERAL CONDITIONS

9.1 Facility Care and Interconnection. During the Delivery Term, the Seller shall execute and maintain an “Interconnection Agreement” with the Buyer, whereby the Seller shall pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable Buyer, WECC, FERC, and NERC requirements, including applicable interconnection and metering requirements. The Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. The Seller also shall arrange and pay independently for any and all necessary costs under the Interconnection Agreement with the Buyer.

9.2 Standard of Care. The Seller shall: (a) operate and maintain the Facility in a safe manner in accordance with its existing applicable interconnection agreements, manufacturer's guidelines, warranty requirements, Good Utility Practice, industry norms (including standards of the National Electrical Code, Institute of Electrical and Electronic Engineers, American National Standards Institute, and the Underwriters Laboratories, and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code, as such laws and code norms may be amended from time to time; (b) obtain any governmental authorizations and permits required for the construction and operation thereof. The Seller shall make any necessary and commercially reasonable repairs with the intent of optimizing the availability of electricity to the Buyer. The Seller shall reimburse the Buyer for any and all losses, damages, claims, penalties, or liability that the Buyer incurs as a result of the Seller's failure to obtain or maintain any governmental authorizations and permits required for the construction and operation of the Facility throughout the Term.

9.3 Access Rights. The Buyer, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to the Buyer by law, including, without limitation, its ordinances, resolutions, tariffs, utility rate schedules or utilities rules and regulations. The Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Facility's operator. The Seller shall keep the Buyer advised of current procedures for communicating with the Facility operator's safety and security departments.

9.4 Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused.

9.5 Insurance. During the Term, the Seller shall obtain and maintain and otherwise comply with the insurance requirements, as set forth in Exhibit "PPA-E."

9.6 Buyer's Performance Excuse; Seller Curtailment.

9.6.1 Buyer Performance Excuse. The Buyer shall not be obligated to accept or pay for the Output during Force Majeure that affects the Buyer's ability to accept Energy.

9.6.2 Seller Curtailment. The Buyer may require the Seller to interrupt or reduce deliveries of Energy: (a) whenever necessary to construct, install, maintain, repair, replace, remove, or investigate any of its equipment or part of the Buyer's Distribution System or facilities; or (b) if the Buyer determines that curtailment, interruption, or reduction is necessary due to a System Emergency, as defined in the CAISO Tariff, an unplanned outage on Buyer's Distribution System, Force Majeure, or compliance with Good Utility Practice.

9.7 Notices of Outages. Whenever possible, the Buyer shall give the Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required.

9.8 No Additional Loads. The Seller shall not connect any loads not associated with Station Service Loads at the location of the Facility in a manner that would reduce Energy provided from the Facility to the Buyer hereunder. The Seller shall obtain separate retail electric service under the Buyer's rate schedules for the service of such additional loads.

## **10.0 FORCE MAJEURE**

10.1 Effect of Force Majeure. A Party shall be excused from its performance under this Agreement to the extent, but only to the extent, that its performance hereunder is prevented by Force Majeure. A Party claiming Force Majeure shall exercise due diligence to overcome or mitigate the effects

of Force Majeure; provided, that nothing in this Agreement shall be deemed to obligate the Party affected by Force Majeure (a) to forestall or settle any strike, lock-out or other labor dispute against its will; or (b) for Force Majeure affecting the Seller only, to purchase electric power to cure Force Majeure.

10.2 Remedial Action. A Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to Force Majeure. The Party rendered unable to fulfill an obligation by reason of Force Majeure shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after that cause has been removed. Notwithstanding the foregoing, the existence of Force Majeure shall not excuse any Party from its obligations to make payment of amounts due hereunder.

10.3 Notice of Force Majeure. In the event of any delay or nonperformance resulting from Force Majeure, the Party directly impacted by Force Majeure shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

10.4 Termination Due to Force Majeure. If a Party will be prevented from performing its material obligations under this Agreement for an estimated period of twelve (12) consecutive months or longer due to Force Majeure, then the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) Days' prior written notice at any time during Force Majeure.

## **11.0 INDEMNITY**

11.1 Indemnity by the Seller. The Seller shall indemnify, defend, and hold harmless the Buyer, its elected and appointed officials, directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees, resulting from, or arising out of or in any way connected with claims by third parties associated with (A) (i) Energy delivered at the Delivery Point; (ii) the Seller's operation and/or maintenance of the Facility; or (iii) the Seller's actions or inactions with respect to this Agreement, and (B) any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to the Buyer or other third party, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of the Buyer, its agents, employees, directors or officers.

11.2 Indemnity by the Buyer. The Buyer shall indemnify, defend, and hold harmless the Seller, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees resulting from, or arising out of or in any way connected with claims by third parties associated with acts of the Buyer, its officers, employees, agents, and representatives, relating to: (A) Energy delivered by the Seller under this Agreement after the Delivery Point, and (B) any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to the Seller or other third party, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of the Seller, its agents, employees, directors or officers.

## **12.0 LIMITATION OF DAMAGES**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR



CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

### 13.0 NOTICES

Notices shall, unless otherwise specified herein, be given, in writing, and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail) to the addresses set forth in Exhibit "PPA-F." Whenever this Agreement requires or permits delivery of a "notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or electronic mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific Time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. A Party may request a change to Exhibit "PPA-F" as necessary to keep the information current.

### 14.0 TERM, TERMINATION EVENT AND TERMINATION

14.1 Term. The Term shall commence upon the execution by the duly authorized representatives of each of the Parties, and shall remain in effect until the conclusion of the Delivery Term, unless terminated sooner pursuant to the terms and conditions of this Agreement. All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

14.2 Delivery Term. The Delivery Term of the Agreement is \_\_\_\_\_ years and is defined as the period of time from the Commercial Operation Date through the expiration or early termination of this Agreement.

14.3 Termination Event.

14.3.1 The Buyer shall have the right, but not the obligation, to terminate this Agreement upon the occurrence of any of the following, each of which is a "Termination Event": (a) The Facility has not achieved Commercial Operation within seventy (70) days following the Deadline; (b) After the Commercial Operation Date, the Seller has not sold or delivered Energy from the Facility to the Buyer for a period of twelve (12) consecutive months; (c) If the Facility does not obtain RPS Certification within six (6) months of the Commercial Operation Date and maintain RPS Certification as required by Section 3.2; or (d) The Seller breaches any other material obligation of this Agreement.

14.3.2 The Seller shall have the right, but not the obligation, to terminate this Agreement upon the occurrence of any of the following, each of which is a "Termination Event": (a) The Buyer fails to make a payment due and payable under this Agreement within thirty (30) days after written notice that such payment is due; or (b) The Buyer breaches any other material obligation of this Agreement. The preceding sentence notwithstanding, the Seller may terminate this Agreement without cause at any time prior to the Commercial Operation Date, subject to the provisions of Section 7 of this Agreement.

14.4 Time to Cure. None of the events described in Section 14.2.1 and 14.2.2 shall constitute a Termination Event if the Buyer or the Seller cures the event, failure, or circumstance within thirty (30) days after receipt of written notification sent by the other Party, seeking termination, or such longer period as may be necessary to cure so long as the Party subject to the Terminating Event is exercising diligent efforts to cure.

14.5 Termination.

14.5.1 Declaration of a Termination Event. If a Termination Event has occurred and is continuing, the Party with the right to terminate shall have the right to: (a) send notice, designating a day, no earlier than thirty (30) days after such notice is deemed to be received (as provided in Section 13), as an early termination date of this Agreement (the “Early Termination Date”), unless the Seller has timely communicated with the Buyer and the Parties have agreed to resolve the circumstances giving rise to the Termination Event; (b) accelerate all amounts owing between the Parties; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date.

14.5.2 Release of Liability for Termination Event. Upon termination of this Agreement pursuant to this section neither Party shall be under any further obligation or subject to liability hereunder, except with respect to the indemnity provision in Section 11 hereof, which shall remain in effect for a period of 12 months following the Early Termination Date.

14.6 No Limitation on Damages. Nothing in this Agreement shall be deemed or construed to limit a Party’s right to recover damages from the other Party, except as otherwise provided in this Agreement.

## **15.0 RELEASE OF DATA**

Except as may be exempt from disclosure under applicable law, the Seller authorizes the Buyer to release to any regulatory authority having jurisdiction over the Facility or a Party, or to any request made pursuant to the California Constitution or the California Public Records Act, information regarding the Facility, including the Seller’s name and location, operational characteristics, the Term of this Agreement, the Facility resource type, the scheduled Commercial Operation Date, the actual Commercial Operation Date, the Contract Capacity, payments made to the Seller and Energy production information. The Seller acknowledges that this information may be made publicly available.

## **16.0 ASSIGNMENT**

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

16.1 Upon the written request of the Seller, the Buyer will execute a “Lender Consent and Agreement” between the Seller and the Seller’s lender(s), if any, in the form acceptable to the Parties; provided, for illustration purposes only, an exemplar is attached hereto as Exhibit “PPA-G.”

16.2 Notwithstanding the foregoing, no Consent and Agreement shall be required for:

16.2.1 Any assignment or transfer of this Agreement by the Seller to an affiliate of the Seller, provided that such affiliate’s creditworthiness is equal to or better than that of Seller, as reasonably determined by the non-assigning or non-transferring Party; or

16.2.2 Any assignment or transfer of this Agreement by the Seller or the Buyer to a person succeeding to all or substantially all of the assets of such Party, provided that such person’s creditworthiness is equal to or greater than that of such Party, as reasonably determined by the non-assigning or non-transferring Party.

16.2.3 Notification of any assignment or transfer of this Agreement under Section 16.2.1 or 16.2.2 shall be given to the non-assigning or non-transferring Party in accordance with Exhibit “PPA-F.”

## **17.0 APPLICABLE LAW, VENUE, ATTORNEYS’ FEES, AND INTERPRETATION**

This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties will comply with applicable laws pertaining to their obligations arising under this

Agreement. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California or in the United States District Court for the Northern District of California in the County of Santa Clara, State of California. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. If a court of competent jurisdiction finds or rules that any provision of this Agreement, the Exhibits, or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement, the Exhibits, or any amendment thereto will remain in full force and effect. The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any Exhibit or any amendment thereof.

**18.0 SEVERABILITY**

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

**19.0 COUNTERPARTS; INTERPRETATION OF CONFLICTING PROVISIONS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or portable document format ("PDF") transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement. In the event of a conflict between the Agreement and any, some or all of the Exhibits, the document imposing the more specific duty or obligation will prevail.

**20.0 GENERAL**

No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only.

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**21. EXHIBITS**

The following exhibits shall be deemed incorporated in and made a part of this Agreement.

- Exhibit "PPA-A" - Facility Description, Prices, and Reservation Deposit
- Exhibit "PPA-B" - Commercial Operation Date Confirmation Letter
- Exhibit "PPA-C" - Scheduling and Outage Notification Procedure
- Exhibit "PPA-D" - Green Attributes Reporting and Conveyance Procedures
- Exhibit "PPA-E" - Insurance Requirements
- Exhibit "PPA-F" - Notices
- Exhibit "PPA-G" - Form of Lender Consent and Agreement

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date.

**CITY OF PALO ALTO**

**SELLER**

APPROVED AS TO FORM

\_\_\_\_\_

\_\_\_\_\_  
Senior Deputy City Attorney

APPROVED

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

**EXHIBIT "PPA-A"**

**Facility Description, Rates, and Reservation Deposit**

**Program Rates**

Contract Term: Twenty (20) or twenty-five (25) years  
Contract rate: \$0.165 per kWh for solar resources, 20-year or 25-year contract term  
\$0.093 per kWh for non-solar resources, 20-year contract term  
\$0.094 per kWh for non-solar resources, 25-year contract term  
Pre-certification rate: \$0.08 per kWh

**Reservation Deposit**

Reservation Deposit (\$20/kW of Contract Capacity) \$ \_\_\_\_\_

**Service address:** \_\_\_\_\_

**Facility Description:**

\_\_\_\_\_

**Contract Capacity:** \_\_\_\_\_ kW (CEC-AC), based on solar array rating (Panel rated output at PV USA test conditions x inverter efficiency)

**Facility primary fuel/technology:** \_\_\_\_\_

**EXHIBIT "PPA-B"**

**Commercial Operation Date Confirmation Letter**

In accordance with the terms of the Power Purchase Agreement (Palo Alto CLEAN), dated \_\_\_\_\_ (the "Agreement") by and between the City of Palo Alto, as the Buyer, and \_\_\_\_\_, as the Seller, this Confirmation Letter serves to document the Parties' agreement that (i) the conditions precedent to the occurrence of the Commercial Operation Date have been satisfied, and (ii) the Buyer has received Energy, as specified in the Agreement, as of \_\_\_\_\_, \_\_\_\_\_. The actual installed Contract Capacity is \_\_\_\_\_ kW.

This Confirmation Letter shall confirm the Commercial Operation Date, as defined in the Agreement, as of the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this letter to be duly executed by its authorized representative as of the date of last signature provided below:

**Buyer**

**Seller**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Director of Utilities

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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

**In recognition of the Commercial Operation Date relative to the Effective Date** of the Agreement by and between the Buyer and the Seller, the Seller hereby calculates the amount to return, if any, of the Seller's deposit, as follows:

Original Reservation Deposit Amount: \$ \_\_\_\_\_

Commercial Operation Date Deadline: \_\_\_\_\_

- Commercial Operation Date is prior to Deadline
- Commercial Operation Date occurred \_ \_\_\_\_\_ weeks following the Deadline, meaning that \_\_\_\_\_ % of the Reservation Deposit is relinquished by Seller per Section 7.2.2 of the Power Purchase Agreement.

Amount (if any) of Reservation Deposit to return to the Seller is: \$ \_\_\_\_\_

## EXHIBIT "PPA-C"

### Scheduling and Outage Notification Procedure

C.1 Applicability. This Exhibit "PPA-C" shall apply if the Facility is subject to Section 6.0 of this Agreement.

C.2 Annual Operations Forecast

C.2.1 By the tenth (10th) day September of each calendar year, the Seller will provide NCPA with an annual operations forecast detailing hourly expected generation and all proposed planned Outages for the next calendar year. The annual operations forecast for the calendar year shall be provided by not later than ninety (90) days prior to the scheduled Commercial Operation Date of the Generating Facility.

C.2.2 NCPA may request modifications to the annual operations forecast at any time, and the Seller shall use good faith efforts to accommodate the requested modifications.

C.2.3 The Seller shall not conduct Planned Outages at times other than as set forth in its annual operations forecast, unless approved in advance by NCPA, which approval shall not be withheld or delayed unreasonably.

C.2.4 The Seller shall not schedule or conduct Planned Outages from 12:00 p.m. through 7:00 p.m. Pacific Time during the months of June through October.

C.3. Short Term Operations Forecasts

C.3.1. Quarterly Operations Forecast

C.3.1.1 By the fifth (5th) day of January, April and July of each Contract Year, the Seller shall provide a calendar quarter-operations forecast by hour of expected generation and all proposed Planned Outages for the next full calendar quarter and the twelve (12) months following that calendar quarter. As an example, by January 5, 2014, the Seller would provide a calendar quarter-operations forecast by hour of expected generation for the period, April 1, 2014 through June 30, 2014, and identify all proposed Planned Outages for the period, April 1, 2014 through June 30, 2015.

C.3.1.2 NCPA will approve or require modifications to the proposed calendar quarter-operations forecast within ten (10) days of receipt of the forecast.

C.3.1.3 If required by NCPA, the Seller will provide a modified calendar quarter-operations forecast within seven (7) days after receipt of required modifications from NCPA.

C.3.2 Weekly Update

C.3.2.1 By 14:00 of each Wednesday, the Seller shall provide an electronic update, in a format specified by NCPA, to the calendar quarter-operations forecast for the following seven (7) days (Thursday through the next Wednesday).

C.3.2.2 The weekly update shall include hourly expected generation and all proposed planned Outages for the relevant seven (7) day period.

C.4 Outage Detail for Annual and Short Term Operations Forecasts. Outage information provided by the Seller shall include, at a minimum, the start time and stop time of the Outage, capacity out of service (kW), the equipment that is or will be out of service, and the reason for the Outage.

## C.5 General Scheduling Protocols

C.5.1 Daily Modifications to Forecasts. Unless otherwise mutually agreed, the Seller may make changes to the weekly update to the calendar quarter-operations forecast by providing such changes to NCPA prior to 08:00 of the day that is two (2) Business Days before the active scheduling day as determined by the WECC prescheduling calendar. Example: For power that is scheduled for generation or delivery on Friday, March 29, 2014, changes must be submitted to NCPA by 08:00 on Wednesday, March 27, 2014.

C.5.2 Hourly Modifications to Active Schedules. Unless otherwise mutually agreed, the Seller may request changes to active schedules by providing such changes to NCPA with a minimum of four (4) hours' notice prior to the applicable CAISO market deadline (e.g. Hour Ahead Scheduling Process ("HASP") Scheduling deadline, as defined in the CAISO Tariff). Active day Schedule changes are not binding. Changes to active Schedules are limited to two (2) changes per day, excluding forced Outages, unless otherwise agreed to between the Parties. One request for a Schedule change, of one-hour or multiple-hours duration, constitutes one Schedule change. Example: For power that is scheduled for generation or delivery in hour ending 15:00 (for the period from 14:01 to 15:00), changes must be submitted to NCPA by 10:00.

C.5.3. Unforeseen Circumstances. At the Seller's request, NCPA may, but is not required to, modify the Schedules for the Generation Facility Output due to unforeseen circumstances in accordance with the above scheduling timeline constraints described in this Exhibit PPA-C.

C.5.4. Absence of Forecasts. In the absence of forecasts and schedules as required by this Agreement or this Exhibit, NCPA shall utilize the most current information the Seller provides in the development and submission of Schedules.

## C.6 Outage Reporting Protocols

C.6.1. Notification. The Seller shall notify NCPA of all planned or forced Outages of the Generating Facility to ensure compliance with the CAISO Outage Coordination and Enforcement Protocols.

C.6.1.1 Outage information provided by the Seller shall include, at a minimum, the start time and stop time of the Outage, Capacity out of service (kW), equipment out of service, and the reason for the Outage.

C. 6.1.2 Seller shall provide the Planned Outages not included in the annual operations forecast, the calendar quarter-operations forecast, or the weekly update, to NCPA at least four (4) Business Days prior to the start of the requested outage.

C. 6.1.3 At any time prior to the start of a Planned Outage, the CAISO may deny the Outage due to a System Emergency (as defined in the CAISO Tariff) or as otherwise permitted under the CAISO Tariff. If NCPA receives notice that the CAISO has denied an Outage in accordance with the CAISO Tariff, NCPA will notify the Seller as soon as possible and the Seller shall modify the planned Outage as required by the CAISO.

C.6.2 Commencement of an Outage. The Seller shall not begin any Planned Outage without the prior approval of NCPA and the CAISO.

### C.6.3 Forced Outages

C.6.3.1 The Seller shall report the Forced Outages to NCPA within twenty (20)



minutes of such Outages.

C.6.3.2 The Seller's notice of a Forced Outage sent to NCPA shall include the reason for the Outage (if known), expected duration of the Outage, and the Capacity reduction.

C.6.3.3 By the end of the next Business Day following the day on which a Forced Outage has occurred, the Seller shall provide to NCPA a detailed written report, specifying the reason for the Outage, expected duration of such Outage, capacity reduction, and actions taken to mitigate such Outage.

C.6.4 Return to Service. The Seller shall notify NCPA as soon as possible, but in any case before the Generating Facility is returned to service.

C.7 Notices. All Scheduling notices and Schedules shall be submitted to NCPA by phone, fax or email, or other means as may be mutually agreed by the Parties, to the persons designated in Exhibit "PPA-F."

C.8 Changes in Scheduling and Outage Procedure. The Buyer shall revise Exhibit "PPA-C," or, as appropriate, give written notice to the Seller regarding the revision, and issue a new Exhibit "PPA-C," which shall then become part of the Agreement to reflect changes in the scheduling and outage notification procedure.

## EXHIBIT “PPA-D”

### Green Attributes Reporting and Conveyance Procedures

#### D.1 Additional Definitions for the Conveyance of Green Attributes

D.1.1 “Certificate Transfers” means the process, as described in the WREGIS Operating Rules, whereby a WREGIS account holder may request that WREGIS Certificates from a specific generating unit shall be directly deposited to another WREGIS account.

D.1.2 “WREGIS Certificates” means a certificate created within the WREGIS system that represents all Renewable and Green Attributes from one MWh of electricity generation from an Eligible Renewable Energy Resource that is registered with WREGIS.

D.1.3 “WREGIS Operating Rules” means the document published by WREGIS that governs the operation of the WREGIS system for registering, tracking, and conveying, among others, RECs produced from Eligible Renewable Energy Resources that shall be registered with WREGIS.

D.1.4 “WREGIS” means Western Renewable Energy Generation Information System.

D.2 RECs. Green Attributes shall be conveyed by the Seller to the Buyer through RECs, which shall be registered tracked and conveyed to the Buyer, using WREGIS.

D.3 WREGIS Registration. Prior to the Commercial Operation Date, the Buyer will register the Facility in the Buyer’s WREGIS account on behalf of the Seller. The Buyer shall charge back to the Seller any costs of registering and maintaining the registration of the Facility with WREGIS. The Seller shall provide to the Buyer any documents required by WREGIS and assign the Seller’s rights to register the Facility in WREGIS, using agreements provided by WREGIS.

D.4 Buyer’s WREGIS Account. The Buyer shall, at its sole expense, establish and maintain the Buyer’s WREGIS account sufficient to accommodate the WREGIS Certificates produced by the output of the Facility. The Buyer shall be responsible for all expenses associated with (A) establishing and maintaining the Buyer’s WREGIS Account, and (B) subsequently transferring or retiring WREGIS Certificates.

D.5 Qualified Reporting Entity. The Buyer shall be the Qualified Reporting Entity (as such term is defined by WREGIS) for the Facility, and shall be responsible for providing the metered Output data to WREGIS.

D.6 Reporting of Environmental Attributes. In lieu of the Seller’s transfer of the WREGIS Certificates using Certificate Transfers from the Seller’s WREGIS account to the Buyer’s WREGIS account, the Buyer shall report the Facility as being held directly in its WREGIS account, which will preclude the Seller from reporting the Facility in its own WREGIS account.

D.6.1 By avoiding the use of Certificate Transfers, there will be no transaction costs to the Seller or the Buyer for the Certificate Transfers that would otherwise be used.

D.6.2 WREGIS Certificates for the Facility will be created on a calendar month basis in accordance with the certification procedure established by the WREGIS Operating Rules in an amount equal to the Energy generated by the Project and delivered to the Buyer in the same calendar month.

D.6.3 WREGIS Certificates will only be created for whole MWh amounts of energy generated. Any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate and all such accumulated

MWh of Environmental Attributes will then be available to Buyer.

D.6.4 If a WREGIS Certificate Modification (as such term is defined by WREGIS) will be required to reflect any errors or omissions regarding the Green Attributes from the Facility, then the Buyer will manage the submission of the WREGIS Certificate Modification.

D.6.5 Due to the expected delay in the creation of WREGIS Certificates relative to the timing of invoice payments under Section 2, the Buyer will normally be making an invoice payment for the Output for a given month in accordance with Section 2 before the WREGIS Certificates for such month may be created in the Buyer's WREGIS account. Notwithstanding this delay, the Buyer shall have all right and title to all such WREGIS Certificates upon payment to the Seller in accordance with Section 2.

D.7 Changes in Green Attributes Reporting and Conveyance Procedures. The Buyer shall revise this Exhibit "PPA-D," as appropriate, give written notice to the Seller regarding the revision, and issue a new Exhibit "PPA-D," which shall then become part of this Agreement in the event that:

D.7.1 WREGIS changes the WREGIS Operating Rules (as defined by WREGIS) after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Exhibit "PPA-D" after the Effective Date; or,

D.7.2 WREGIS is replaced as the primary method that the Buyer uses for conveyance of Green Attributes, or additional methods to convey all Green Attributes, are required.

**EXHIBIT “PPA-E”**

**Insurance Requirements**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, WILL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH A BEST’S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

**AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:**

| REQUIRED   | TYPE OF COVERAGE  | REQUIREMENT                                 | MINIMUM LIMITS  |             |
|------------|---|---|-----------------|-------------|
|            |   |   | EACH OCCURRENCE | AGGREGATE   |
| YES<br>YES | WORKER’S COMPENSATION<br>AUTOMOBILE LIABILITY   | STATUTORY<br>STATUTORY                      |                 |             |
| YES        | COMMERCIAL GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY   | BODILY INJURY                               | \$1,000,000     | \$2,000,000 |
|            |   | PROPERTY DAMAGE                             | \$1,000,000     | \$2,000,000 |
|            |   | BODILY INJURY & PROPERTY DAMAGE COMBINED.   | \$1,000,000     | \$2,000,000 |
| YES        | COMPREHENSIVE AUTOMOBILE LIABILITY, INCLUDING, OWNED, HIRED, NON-OWNED  | BODILY INJURY                               | \$1,000,000     | \$1,000,000 |
|            |   | - EACH PERSON                               | \$1,000,000     | \$1,000,000 |
|            |   | - EACH OCCURRENCE                           | \$1,000,000     | \$1,000,000 |
|            |   | PROPERTY DAMAGE                             | \$1,000,000     | \$1,000,000 |
|            |   | BODILY INJURY AND PROPERTY DAMAGE, COMBINED | \$1,000,000     | \$1,000,000 |
| NO         | PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE   | ALL DAMAGES                                 | \$1,000,000     |             |
| YES        | <b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> PROPOSER, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY PROPOSER AND ITS SUBCONSULTANS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSURES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b> |   |                 |             |

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY – SEE, SAMPLE AGREEMENT FOR SERVICES.

II. SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE, **OR** COMPLETE THIS SECTION AND IV THROUGH V, BELOW.

A. NAME AND ADDRESS OF COMPANY AFFORDING COVERAGE (NOT AGENT OR BROKER):

\_\_\_\_\_

B. NAME, ADDRESS, AND PHONE NUMBER OF YOUR INSURANCE AGENT/BROKER:

\_\_\_\_\_

C. POLICY NUMBER(S):

\_\_\_\_\_

D. DEDUCTIBLE AMOUNT(S) (DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL):

\_\_\_\_\_

III. AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AND PROPOSER'S SUBMITTAL OF CERTIFICATES OF INSURANCE EVIDENCING COMPLIANCE WITH THE REQUIREMENTS SPECIFIED HEREIN.

IV. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURES"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURES.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURES UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

V. PROPOSER CERTIFIES THAT PROPOSER'S INSURANCE COVERAGE MEETS THE ABOVE REQUIREMENTS:

**THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW. SIGNATURE(S) MUST BE SAME SIGNATURE(S) AS APPEAR(S) ON SECTION II, ATTACHMENT A, PROPOSER'S INFORMATION FORM.**

Firm: \_\_\_\_\_

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

Name: \_\_\_\_\_  
(Print or type name)

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

Name: \_\_\_\_\_  
(Print or type name)

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND  
CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303.**

**EXHIBIT “PPA-F”**

**Notices**

**Contract Administration**

|  |                |
|--|----------------|
| <b>BUYER:</b><br>City of Palo Alto<br>Utilities Resource Management<br>250 Hamilton Avenue<br>Palo Alto, CA 94301<br>Ph: 650-329-2689<br>Email: UtilityCommoditySettlements@CityofPaloAlto.Org | <b>SELLER:</b> |
|--|----------------|

**Billing and Settlements**

|  |                |
|--|----------------|
| <b>BUYER:</b><br>City of Palo Alto<br>Utilities Resource Management<br>250 Hamilton Avenue<br>Palo Alto, CA 94301<br>Ph: 650-329-2689<br>Email: UtilityCommoditySettlements@CityofPaloAlto.Org | <b>SELLER:</b> |
|--|----------------|

**Forecasting and Outage Reporting under Section 6 of this Agreement**

**Planned Outages:**

|   |                |
|---|----------------|
| <b>BUYER:</b><br>Northern California Power Agency Real-<br>Time Dispatch<br>651 Commerce Drive<br>Roseville, CA 95678<br>Ph: 916-786-3518 | <b>SELLER:</b> |
|---|----------------|

**Forced Outages**

|   |                |
|---|----------------|
| <b>BUYER:</b><br>Northern California Power Agency Real-<br>Time Dispatch<br>651 Commerce Drive<br>Roseville, CA 95678<br>Ph: 916-786-3518 | <b>SELLER:</b> |
|---|----------------|

**Forecasting and Scheduling**

|   |                |
|---|----------------|
| <b>BUYER:</b><br>Northern California Power Agency<br>Operations and Pre-Scheduling<br>651 Commerce Drive<br>Roseville, CA 95678<br>Ph: 916-786-0123 | <b>SELLER:</b> |
|---|----------------|

**EXHIBIT “PPA-G”**

**Form of Lender Consent and Agreement**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among the CITY OF PALO ALTO, a California chartered municipal corporation (the “City”), \_\_\_\_\_, a \_\_\_\_\_ corporation (the “Lender,” by its agent, \_\_\_\_\_ (the “Administrative Agent”), and \_\_\_\_\_, a \_\_\_\_\_ corporation (the “Borrower”) (collectively, the “Parties”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

**RECITALS**

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_\_\_MW electric generating facility located in the city of Palo Alto in the State of California, known as the \_\_\_\_\_ Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain financing agreement dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”) , and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. The City and Borrower have entered into that certain Power Purchase Agreement, dated as of \_\_\_\_\_ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Power Purchase Agreement”).

D. The City and Borrower have entered into that certain Interconnection Agreement, dated as of \_\_\_\_\_ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Interconnection Agreement”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Power Purchase Agreement and Interconnection Agreement to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

F. It is a requirement under the Financing Agreement that the Parties hereto execute this Consent.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties agree, as follows:

1. CONSENT TO ASSIGNMENT. The City acknowledges the assignment referred to in Recital E above, consents to an assignment of the Power Purchase Agreement and Interconnection Agreement pursuant thereto, and agrees with Administrative Agent, as follows:

(a) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any



defaults of Borrower under the Power Purchase Agreement or Interconnection Agreement, as the case may be, subject to applicable notice and cure periods provided in the Power Purchase Agreement and Interconnection Agreement. Upon receipt of notice from Administrative Agent, the City agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Power Purchase Agreement or Interconnection Agreement, as the case may be, and this Consent. Upon receipt of Administrative Agent's written instructions and to the extent allowed by law, the City agrees to make directly to such account as Administrative Agent may direct the City, in writing, from time to time, all payments to be made by the City to Borrower under the Power Purchase Agreement or Interconnection Agreement, as the case may be, from and after the City's receipt of such instructions, and Borrower consents to any such action. The City shall not incur any liability to Borrower under the Power Purchase Agreement, Interconnection Agreement, or this Consent for directing such payments to Administrative Agent in accordance with this subsection (a).

(b) The City will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Power Purchase Agreement or Interconnection Agreement, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Power Purchase Agreement or Interconnection Agreement and in accordance with subparagraph 1(c) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Power Purchase Agreement or Interconnection Agreement, except as provided in the Power Purchase Agreement or Interconnection Agreement, or (iii) amend or modify the Power Purchase Agreement or Interconnection Agreement in any manner materially adverse to the interest of the Lenders in the Power Purchase Agreement and Interconnection Agreement as collateral security under the Security Agreement.

(c) The City agrees to deliver duplicates or copies of all notices of default delivered by the City under or pursuant to the Power Purchase Agreement or Interconnection Agreement to Administrative Agent in accordance with the notice provisions of this Consent. The City shall deliver any such notices concurrently with delivery of the notice to Borrower under the Power Purchase Agreement or Interconnection Agreement. To the extent that a cure period is provided under the Power Purchase Agreement or Interconnection Agreement, Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the Power Purchase Agreement or Interconnection Agreement, except that if the City does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Power Purchase Agreement or Interconnection Agreement, then as to Administrative Agent, the applicable cure period under the Power Purchase Agreement or Interconnection Agreement shall begin on the date on which the notice is given to Administrative Agent. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings so long as Administrative Agent or its designee(s) continue to perform any monetary obligations under the Power Purchase Agreement or Interconnection Agreement, as the case may be. The City consents to the transfer of Borrower's interest under the Power Purchase Agreement and Interconnection Agreement to the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, the City shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Power Purchase Agreement and Interconnection Agreement (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Power Purchase Agreement and Interconnection Agreement, including, without limitation, satisfaction and compliance with all credit provisions of the Power Purchase Agreement and Interconnection Agreement, if any, and provided further that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee has a creditworthiness equal to or better than

Borrower, as reasonably determined by City).

(d) In the event that either the Power Purchase Agreement or Interconnection Agreement, or both is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within forty-five (45) days after such rejection, Administrative Agent shall so request, the City will execute and deliver to Administrative Agent a new power purchase agreement or interconnection agreement, as the case may be, which power purchase agreement or interconnection agreement shall be on the same terms and conditions as the original Power Purchase Agreement or Interconnection Agreement for the remaining term of the original Power Purchase Agreement or Interconnection Agreement before giving effect to such rejection, and which shall require Administrative Agent to cure any defaults then existing under the original Power Purchase Agreement or Interconnection Agreement. Notwithstanding the foregoing, any new renewable power purchase agreement or interconnection agreement will be subject to all regulatory approvals required by law. The City will use good faith efforts to promptly obtain any necessary regulatory approvals.

(e) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Power Purchase Agreement and Interconnection Agreement, succeed to Borrower's interest under the Power Purchase Agreement and Interconnection Agreement, or enter into a new power purchase agreement or interconnection agreement as provided in subparagraph 1(d) above, the recourse of the City against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such Parties' interests in the Project, and the credit support required under the Power Purchase Agreement and Interconnection Agreement, if any.

(f) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Power Purchase Agreement and Interconnection Agreement, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Power Purchase Agreement or Interconnection Agreement, except any performance defaults of Borrower itself, which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Power Purchase Agreement and Interconnection Agreement to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Power Purchase Agreement and Interconnection Agreement and has a creditworthiness equal to or better than Borrower, as reasonably determined by the City. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

2. REPRESENTATIONS AND WARRANTIES. The City hereby represents and warrants that as of the date of this Consent:

(a) It (i) is duly formed and validly existing under the laws of the State of California, and (ii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Power Purchase Agreement and Interconnection Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent, the Power Purchase Agreement and the Interconnection Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent, the Power Purchase Agreement, and the Interconnection Agreement is in full force and effect;

(d) each of this Consent, the Power Purchase Agreement, and the Interconnection Agreement has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(e) there is no litigation, arbitration, investigation or other proceeding pending for which the City has received service of process or, to the City's actual knowledge, threatened against the City relating solely to this Consent, the Power Purchase Agreement, or the Interconnection Agreement and the transactions contemplated hereby and thereby;

(f) the execution, delivery and performance by it of this Consent, the Power Purchase Agreement, and the Interconnection Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(g) neither the City nor, to the City's actual knowledge, any other party to the Power Purchase Agreement or Interconnection Agreement, is in default of any of its obligations thereunder; and

(h) to the City's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Power Purchase Agreement or Interconnection Agreement and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the City or Borrower to terminate or suspend its obligations under the Power Purchase Agreement or the Interconnection Agreement.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

3. NOTICES. All notices required or permitted hereunder shall be given, in writing, and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to the City:  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_  
Facsimile No.: [\_\_\_\_\_  
Attn: [\_\_\_\_\_]

If to Administrative Agent:  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_  
Facsimile No.: [\_\_\_\_\_  
Attn: [\_\_\_\_\_]

If to Borrower:  
 [\_\_\_\_\_  
 [\_\_\_\_\_  
 [\_\_\_\_\_  
 Telephone No.: [\_\_\_\_\_  
 Facsimile No.: [\_\_\_\_\_  
 Attn: [\_\_\_\_\_]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above.

4. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the Parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). The City agrees (a) to confirm such continuing obligation, in writing, upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to the City with respect to its interest in the Power Purchase Agreement or Interconnection Agreement to assume, in writing and in form and substance reasonably satisfactory to Administrative Agent, the obligations of City hereunder. Any purported assignment or transfer of the Power Purchase Agreement or Interconnection Agreement not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder.

5. GOVERNING LAW. This Consent shall be governed by the laws of the State of California applicable to contracts made and to be performed in California. The federal courts or the state courts located in California shall have exclusive jurisdiction to resolve any disputes with respect to this Consent with the City, Assignor, and the Lender or Lenders irrevocably consenting to the jurisdiction thereof for any actions, suits, or proceedings arising out of or relating to this Consent.

6. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

7. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the Parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other Parties hereto, shall not in any way be affected or impaired thereby.

8. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by the City of any of the obligations of the City hereunder, the exercise of any of the rights of the City hereunder, or the acceptance by the City of performance of the Power Purchase Agreement by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Power Purchase Agreement or Interconnection Agreement, (2) constitute a consent by the City to, or impute knowledge to the City of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) except as expressly set forth in this Consent, constitute a waiver by the City of any of its rights under the Power Purchase Agreement or Interconnection Agreement. Borrower and Administrative Agent acknowledge hereby for the benefit of City that none of the Financing Agreement, the Security

Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Power Purchase Agreement.

**CITY OF PALO ALTO**

**ADMINISTRATIVE AGENT**

APPROVED AS TO FORM

\_\_\_\_\_

\_\_\_\_\_  
Senior Deputy City Attorney

**BORROWER**

APPROVED

\_\_\_\_\_

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

**EXHIBIT "I"****FORM OF CLEAN PPA INTERCONNECTION AGREEMENT****INTERCONNECTION AGREEMENT**

This Interconnection Agreement (the "Agreement"), dated, for convenience, \_\_\_\_\_, 20\_\_ (the "Effective Date"), is entered into by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the "City"), acting by and through its Department of Utilities ("CPAU"), and ABC COMPANY, a California corporation (the "Facility Owner"), located at the address stated below (the City and the Facility Owner are referred to, individually, as a "Party", and, collectively, as the "Parties").

**1.0 TERM**

- 1.1 This Agreement takes effect on the Effective Date, and it will continue for a term of ten (10) years, until it is earlier terminated, as follows: (a) the Facility Owner gives the City or CPAU thirty (30) days' prior written notice of termination; (b) if Operating Mode #2 or Operating Mode #3 is selected in Exhibit A, upon the effective date of termination of the Power Purchase Agreement or the Other Agreement between the Parties; or (c) a Party effectively terminates due to a material default and breach by the other Party.
- 1.2 Upon a default referred to in Section 1.1(c), the non-defaulting Party shall give written notice of such event of default to the defaulting Party. The defaulting Party shall have sixty (60) days from the receipt of notice of default in which to cure the default; provided, if the defaulting Party informs the non-defaulting Party that it cannot cure the default within the sixty-days period and it in good faith has continuously and diligently attempted to cure the default, then, if the defaulting Party cures within six (6) months from the receipt of the notice of default, the non-defaulting Party may not terminate this Agreement.. No default shall be deemed to exist if the failure to discharge an obligation (other than the payment of money) is the result of force majeure or an act or omission of the other Party

**2.0 GENERATING FACILITY INTERCONNECTION AND METERING**

- 2.1 The Facility Owner will install, operate, maintain, and repair the Generating Facility and use the meter(s) that meet(s) the requirements of CPAU's Rules and Regulations, as amended, and other applicable laws, rules and regulations, including, without limitation, CPAU's interconnection standards, as set forth in its Utilities Rule and Regulation 27 ("Rule 27").
- 2.2 CPAU, at its sole cost and expense, may inspect and approve the installation of the Generating Facility and verify or otherwise authenticate the accuracy of the meter(s) as a condition precedent to its obligation to interconnect.
- 2.3 The Facility Owner grants to the City, including CPAU, its officers, employees, agents and representatives the non-exclusive right of ingress and egress on, over and across the Premises, upon reasonable prior notice, for the purpose of inspecting and approving the installation and operation of the Generating Facility and authenticating the accuracy of the meter(s), or without notice, in the event of an emergency, to protect the public health, safety and welfare, or in regard to a disconnection of the Generating Facility, if CPAU reasonably determines that a condition hazardous to person or property exists and immediate action is necessary to protect person or property from damage or interference caused by the Facility or as a result of the lack of properly operating protective devices of the Facility.
- 2.4 The Facility Owner will obtain and maintain the required governmental approvals, authorizations, permits, and any policy (or policies) of insurance, including, without limitation, commercial general liability, property, and professional liability insurance, as may be required by the City or CPAU or applicable laws.
- 2.5 The Facility Owner will comply with all applicable federal, state and local safety and performance standards applicable to the Generating Facility and established by or under the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE) and accredited testing laboratories, including, without limitation, Underwriters Laboratories (UL), and in accordance with the applicable orders, rules and regulations of the California Public Utilities Commission, pertaining to the safety and reliability of electrical generating systems, and applicable City building codes.

- 2.6 Neither the City nor CPAU will be obligated to accept or pay for, and the City or CPAU may require the Facility Owner to temporarily interrupt or reduce, the delivery of available energy generated by the Generating Facility in the event of the following: (a) whenever CPAU determines that the interruption or reduction is necessary in order for CPAU to construct, install, maintain, repair, replace, remove, investigate, or inspect any part of CPAU's electric utility distribution system; or (b) if CPAU determines that the interruption or reduction is necessary on account of an emergency, voluntary or involuntary outage, force majeure, or compliance with good utility practice.
- 2.7 Notwithstanding any other provision of this Agreement, if CPAU determines that either (a) the operation of the Generating Facility may threaten or endanger the public health, safety or welfare or the City or CPAU's personnel or property, or (b) the continued operation of the Generating Facility may endanger the operational integrity of CPAU's electric utility distribution system, then CPAU will have the right to temporarily or permanently disconnect the Generating Facility from CPAU's electric utility distribution system upon the delivery of prior reasonable notice to the Facility Owner; provided, CPAU may act without giving prior notice to the Facility Owner, if CPAU determines that it is impracticable to provide the notice. The Generating Facility will remain disconnected until such time as CPAU is satisfied that the conditions referred to in this subsection have been corrected or sufficiently addressed.
- 2.8 The Facility Owner will (a) maintain the Generating Facility, which interconnects with CPAU's electric utility distribution system, in a safe and prudent manner and in conformance with all applicable laws, rules and regulations, including, without limitation, the requirements of this Section 2, and (b) obtain any governmental approvals, authorizations and permits required for the construction and operation of the Generating Facility.
- 2.9 The Facility Owner will reimburse CPAU for any and all losses, damages, claims, penalties, or liability that the City or CPAU may incur or sustain as a result of the Facility Owner's failure to obtain and maintain any and all governmental approvals, authorizations and permits that may be required for the construction, installation, operation, repair or maintenance of the Generating Facility.

**3.0 INTERCONNECTION FACILITIES, DISTRIBUTION SYSTEM UPGRADES, AND AFFECTED SYSTEMS**

- 3.1 The Facility Owner shall, in accordance with CPAU Rule 27 or other applicable CPAU Rule, pay, in advance and in full, for all of CPAU's estimated design and construction costs of the Interconnection Facilities and the Distribution System Upgrades, which are specified in Exhibit A.
- 3.2 In the event that the Facility Owner owns the real property, on which the Interconnection Facilities are or will be located, then the Facility Owner shall grant to the City and CPAU (or in the event that Facility Owner is leasing or otherwise obtaining rights to locate the Generating Facility on real property of a third party, the Facility Owner shall obtain for the City and CPAU):
  - 3.2.1 The right to install the Interconnection Facilities and related equipment or materials on that real property along the most practical route, which is of sufficient width to provide the appropriate and safe clearance from all structures now or hereafter erected on that real property; and
  - 3.2.2 The right of ingress and egress to and from that real property, as may be reasonably necessary for CPAU to operate, maintain, repair, and remove the Interconnection Facilities.
- 3.3 Where rights-of-entry or easements are required on or over that real property or the property of a third party for the installation of the Interconnection Facilities, the Facility Owner acknowledges and agrees that CPAU's obligation to install the Interconnection Facilities is expressly conditioned on the granting, without cost to the City or CPAU, of any and all necessary rights-of-entry or easements to the City.
- 3.4 THE CITY MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES WITH RESPECT TO THE DESIGN, CONSTRUCTION, DURABILITY OR SUITABILITY OF THE

NEW INTERCONNECTION FACILITIES OR ANY PART THEREOF, WHETHER EXPRESS OR IMPLIED, AND THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUIET ENJOYMENT, AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO SUCH WORK.

- 3.5 The one-line diagram of the interconnection (at the Delivery Point) is described in Exhibit A. The Interconnection Facilities are the sole and exclusive property of and shall be owned, operated, maintained, and repaired by the City and CPAU, and the Facility Owner disclaim any interest therein.
- 3.6 The Facility Owner shall pay CPAU for the costs of the Interconnection Facilities. The direct costs for the design and construction of the Interconnection Facilities shall be paid in advance by the Facility Owner. The Facility Owner shall be additionally responsible for costs related to ongoing operations, maintenance, and replacement of the Interconnection Facilities.
- 3.7 Upon the Facility Owner's discontinuation of use of the Interconnection Facilities due to termination of this Agreement, or otherwise, CPAU shall have the right to remove any portion of the Interconnection Facilities from the real property on which the Interconnection Facilities are installed or located.
- 3.8 As may be required by applicable agreements between the City or CPAU and one or more Affected Systems' owners and/or operators, CPAU shall coordinate with those Affected Systems' owners and/or operators to support the interconnection. An "Affected System" is an electric system not owned by the City or CPAU but to which CPAU's electric utility distribution system is connected. "Affected System" includes, without limitation, the transmission system that is owned by the Pacific Gas and Electric Company but is operated by the California Independent System Operator Corporation ("CAISO"). If upgrades to an Affected System are required by an Affected System owner and/or operator as a condition of interconnection of the Generating Facility, then the Facility Owner shall be responsible for the costs of such upgrades. The Facility Owner and each Affected System owner and/or operator shall enter into one or more agreements that provide(s) for the financing of such upgrades, as needed, and any repayment as set forth in applicable tariffs of the Affected System' owner and/or operator. The Facility Owner, at its own cost and expense, shall be responsible for entering into any other agreements as may be required by an Affected System's owner and/or operator as a condition of interconnected operation and complying with the requirements of any applicable tariffs. Such agreements may include the "Participating Generator Agreement" (ISO Tariff Appendix M) and the "Meter Services Agreement for CAISO Metered Entities" with the CAISO.

#### **4.0 INDEMNITY**

- 4.1 Each Party, as indemnitor, shall defend, protect, indemnify and hold harmless the other Party, as indemnitee, its elected and appointed officials, directors, officers, employees, agents and representatives of the other Party from and against any and all losses, liability, damages, claims, costs, charges, demands, or expenses (including any direct, indirect or consequential loss, liability, damage, claim, cost, charge, demand, or expense, and reasonable attorneys' fees) for personal injury or death and property damage, arising, directly or indirectly, out of or in connection with (a) the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the indemnitor's facilities, or (b) the making of replacements, additions, betterments to, or reconstruction of the indemnitor's facilities; provided, however, the Facility Owner's duty to indemnify the City and CPAU shall not extend to any loss, liability, damage, claim, cost, charge, demand, or expense resulting from interruptions in electrical service to CPAU's electric utility customers other than the Facility Owner. Neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand, or expense arising out of or resulting from its sole negligence or willful misconduct.
- 4.2 Notwithstanding the foregoing indemnity, and excepting a Party's willful misconduct or sole negligence, each Party shall be solely responsible for damage to its own facilities resulting from electrical disturbances or faults.



- 4.3 This Section 4 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy to be procured by a Party.
- 4.4 EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1, A PARTY SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF OPPORTUNITY OR LOSS OF DATA), HOWSOEVER CAUSED, WHETHER ARISING UNDER TORT, CONTRACT, OR OTHER LEGAL THEORY, AND WHETHER OR NOT FORESEEABLE, THAT ARE INCURRED BY THE OTHER PARTY.

**5.0 NOTICE**

- 5.1 Any notice required to be given under this Agreement will be delivered, in writing, and electronically mailed or delivered by the United States Postal Service, with postage prepaid and correctly addressed to the Party, or personally delivered to the Party, at the address below. Changes to such designation may be made by notice similarly given. All written notices will be directed, as follows:

TO CITY: City of Palo Alto  
Department of Utilities  
250 Hamilton Ave  
Palo Alto, CA 94301  
ATTN.: Utilities Resource Management  
Phone: (650) 329-2689  
FAX: (650) 326-1507  
Email: UtilityCommoditySettlements@CityofPaloAlto.org

TO FACILITY OWNER: ABC Company  
123 Main Street  
Anytown, CA 90909  
ATTN: Senior Vice-President of Operations  
Phone: (999) 999-9999  
FAX: (999) 111-1111  
Email: RenewableEnergyOperations@ABCInc.org

**6.0 MISCELLANEOUS PROVISIONS**

- 6.1 This Agreement is governed by and interpreted in accordance with the laws of the State of California as if executed and to be performed wholly within the State of California.
- 6.2 Any amendment or modification to this Agreement will not be binding upon the Parties, unless the Parties agree thereto, in writing. The failure of a Party at any time or times to require performance of any provision hereof will in no manner affect the right at a later time to enforce the same. No waiver by a Party of the breach of any covenant, term or condition contained in this Agreement, whether by conduct or otherwise, will be deemed or be construed as a further or continuing waiver of any such breach or a waiver of the breach of any other covenant, term or condition, unless such waiver is stated, in writing.
- 6.3 This Agreement supersedes any existing agreement, to which the City and the Facility Owner are parties, under which the Facility Owner is currently operating the Generating Facility, and any such agreement shall be deemed terminated as of the date this Agreement becomes effective.

IN WITNESS WHEREOF, the Parties by their duly appointed representatives have executed this Interconnection Agreement in Palo Alto, County of Santa Clara, as of the Effective Date.

**CITY OF PALO ALTO**

**ABC COMPANY**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
President

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Asst. City Attorney

\_\_\_\_\_  
Director of Utilities

**EXHIBIT A**

**PART 1. GENERATING FACILITY DESCRIPTION**

1. Service address: \_\_\_\_\_, Palo Alto, CA \_\_\_\_\_ (the "Premises")

2. Generating Facility Description:

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

3. Gross power rating of the Generating Facility \_\_\_\_\_ kW, based on:

- Inverter rating
- Solar array rating (Panel rated output at PV USA test conditions x inverter efficiency)
- Generator nameplate
- Prime mover nameplate

4. Generating Facility primary fuel/technology: \_\_\_\_\_

5. Net power rating of the Generating Facility: \_\_\_\_\_ kW, which is the gross power rating stated above net of power used in the Generating Facility to power lights, motors, control systems, and other electrical loads used in operation, including losses on the Generating Facility's electric distribution system

6. Maximum instantaneous power to be exported through the Point of Common Coupling: \_\_\_\_\_ kW

7. Generating facility is connected to the CPAU distribution system at \_\_\_\_\_ Kv

8. Operating Mode (select one of following):

- #1 Power used on-site; no energy export or incidental energy export (default choice);
- #2 Sale to CPAU (feed-in tariff (FIT) rate or merchant generator), which requires disclosure of the Power Purchase Agreement # \_\_\_\_\_;
- #3 Other Agreement:

Description: \_\_\_\_\_, which requires disclosure of the Other Agreement # \_\_\_\_\_.

**PART 2. INTERCONNECTION FACILITIES DESCRIPTION; ESTIMATED COSTS**

- No Interconnection Facilities are required.
- Interconnection Facilities are required (provide information below).

1. The Interconnection Facilities Description:

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- 2. The direct costs of the design and construction of the Interconnection Facilities shall be paid in advance by the Facility Owner in accordance with Rule 27, as amended.
- 3. The Final Estimated CPAU Design and Construction Costs is \$\_\_\_\_\_.
- 4. The Final Estimated CPAU Operations and Maintenance Cost is \$\_\_\_\_\_.
- 5. The Total Cost of Interconnection Facilities is \$\_\_\_\_\_.
- 6. A One-line Diagram of the Interconnection is inserted as Page(s) \_\_ through \_\_.
- 7. A diagram of the Site Layout is inserted as Page(s) \_\_ through \_\_.

**PART 3. DISTRIBUTION SYSTEM UPGRADES REQUIRED**

- No Distribution Upgrades are required.
- Distribution Upgrades are required (provide information below).

1. Description of Distribution Upgrades:

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- 2. The direct costs of the design and construction of the Distribution Upgrades shall be paid in advance by the Facility Owner in accordance with Rule 27, as amended.
- 3. The Final Estimated CPAU Design and Construction Cost is \$\_\_\_\_\_.
- 4. The Final Estimated CPAU Operations and Maintenance Cost is \$\_\_\_\_\_.
- 5. The Total Cost of the Distribution Upgrades is \$\_\_\_\_\_.
- 6. A description of the Distribution Upgrades is inserted as Page(s) \_\_ through \_\_.

**EXHIBIT "J"**

**FORM OF LENDER CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (this "Consent"), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among the CITY OF PALO ALTO, a California chartered municipal corporation (the "City"), \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Lender)," by its agent, \_\_\_\_\_ (the "Administrative Agent"), and \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Borrower") (collectively, the "Parties"). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

**RECITALS**

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_\_\_MW electric generating facility located in the city of Palo Alto in the State of California, known as the \_\_\_\_\_ Project (the "Project").

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain financing agreement dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), among Borrower, the financial institutions from time to time parties thereto (collectively, the "Lenders") , and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. The City and Borrower have entered into that certain Lease Agreement, dated as of \_\_\_\_\_ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Lease").

D. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the Lease to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

E. It is a requirement under the Financing Agreement that the Parties hereto execute this Consent.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties agree, as follows:

1. CONSENT TO ASSIGNMENT. The City acknowledges the assignment referred to in Recital E above, consents to an assignment of the Lease pursuant thereto, and agrees with Administrative Agent, as follows:

(a) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any

defaults of Borrower under the Lease, as the case may be, subject to applicable notice and cure periods provided in the Lease. Upon receipt of notice from Administrative Agent, the City agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Lease, as the case may be, and this Consent. Upon receipt of Administrative Agent's written instructions and to the extent allowed by law, the City agrees to make directly to such account as Administrative Agent may direct the City, in writing, from time to time, any and all payments to be made by the City to Borrower under the Lease, as the case may be, from and after the City's receipt of such instructions, and Borrower consents to any such action. The City shall not incur any liability to Borrower under the Lease or this Consent for directing such payments to Administrative Agent in accordance with this subsection (a).

(b) The City will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Lease, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Lease and in accordance with subparagraph 1(c) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Lease, except as provided in the Lease, or (iii) amend or modify the Lease in any manner materially adverse to the interest of the Lenders in the Lease as collateral security under the Security Agreement.

(c) The City agrees to deliver duplicates or copies of all notices of default delivered by the City under or pursuant to the Lease to Administrative Agent in accordance with the notice provisions of this Consent. The City shall deliver any such notices concurrently with delivery of the notice to Borrower under the Lease. To the extent that a cure period is provided under the Lease, Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the Lease, except that if the City does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Lease, then as to Administrative Agent, the applicable cure period under the Lease shall begin on the date on which the notice is given to Administrative Agent. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings so long as Administrative Agent or its designee(s) continue to perform any monetary obligations under the Lease, as the case may be. The City consents to the transfer of Borrower's interest under the Lease to the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, the City shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Lease (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Lease, including, without limitation, satisfaction and compliance with all credit provisions of the Lease, if any, and provided further that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee has a creditworthiness equal to or better than

Borrower, as reasonably determined by City).

(d) In the event that the Lease is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within forty-five (45) days after such rejection, Administrative Agent shall so request, the City will execute and deliver to Administrative Agent a new lease, which lease shall be on the same terms and conditions as the original Lease for the remaining term of the original Lease before giving effect to such rejection, and which shall require Administrative Agent to cure any defaults then existing under the original Lease. Notwithstanding the foregoing, any new lease will be subject to all regulatory approvals required by law. The City will use good faith efforts to promptly obtain any necessary regulatory approvals.

(e) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Lease, succeed to Borrower's interest under the Lease, or enter into a new lease as provided in subparagraph 1(d) above, the recourse of the City against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such Parties' interests in the Project, and the credit support required under the lease, if any.

(f) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Lease, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Lease, except any performance defaults of Borrower itself, which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Lease to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Lease and has a creditworthiness equal to or better than Borrower, as reasonably determined by the City. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

2. REPRESENTATIONS AND WARRANTIES. The City hereby represents and warrants that as of the date of this Consent:

(a) It (i) is duly formed and validly existing under the laws of the State of California, and (ii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Lease, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent and the Lease have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent and the Lease is in full force and effect;

(d) each of this Consent and the Lease has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(e) there is no litigation, arbitration, investigation or other proceeding pending for which the City has received service of process or, to the City's actual knowledge, threatened against the City relating solely to this Consent, the Lease and the transactions contemplated hereby and thereby;

(f) the execution, delivery and performance by it of this Consent and the Lease, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(g) neither the City nor, to the City's actual knowledge, any other party to the Lease, is in default of any of its obligations thereunder; and

(h) to the City's actual knowledge, (i) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the City or Borrower to terminate or suspend its obligations under the Lease.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

3. NOTICES. All notices required or permitted hereunder shall be given, in writing, and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to the City:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_  
Facsimile No.: [\_\_\_\_\_  
Attn: [\_\_\_\_\_]

If to Administrative Agent:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_  
Facsimile No.: [\_\_\_\_\_  
Attn: [\_\_\_\_\_]



If to Borrower:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Telephone No.: [ \_\_\_\_\_ ]  
Facsimile No.: [ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above.

4. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the Parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). The City agrees (a) to confirm such continuing obligation, in writing, upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to the City with respect to its interest in the Lease to assume, in writing and in form and substance reasonably satisfactory to Administrative Agent, the obligations of City hereunder. Any purported assignment or transfer of the Lease not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder.

5. GOVERNING LAW. This Consent shall be governed by the laws of the State of California applicable to contracts made and to be performed in California. The federal courts or the state courts located in California shall have exclusive jurisdiction to resolve any disputes with respect to this Consent with the City, Assignor, and the Lender or Lenders irrevocably consenting to the jurisdiction thereof for any actions, suits, or proceedings arising out of or relating to this Consent.

6. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

7. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the Parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other Parties hereto, shall not in any way be affected or impaired thereby.

8. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by the City of any of the obligations of the City hereunder, the exercise of any of the rights of the City hereunder, or the acceptance by the City of performance of the Lease by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Lease, (2) constitute a consent by the City to, or impute knowledge to the City of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) except as expressly set forth in this Consent, constitute a waiver by the City of any of its rights under the Lease. Borrower and Administrative Agent acknowledge hereby for the benefit of City that none of the Financing Agreement, the Security

Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Lease.

**CITY OF PALO ALTO**

**ADMINISTRATIVE AGENT**

APPROVED AS TO FORM

\_\_\_\_\_

\_\_\_\_\_  
Senior Deputy City Attorney

**BORROWER**

APPROVED

\_\_\_\_\_

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

**Schedule 23.2****Termination Value**

| <b>Year</b> | <b>275 Cambridge</b> | <b>475 Cambridge</b> | <b>520 Webster</b> | <b>445 Bryant</b> |
|-------------|----------------------|----------------------|--------------------|-------------------|
| 1           | \$995,014            | \$1,222,788          | \$992,017          | \$683,323         |
| 2           | \$959,623            | \$1,179,296          | \$956,733          | \$659,018         |
| 3           | \$925,897            | \$1,137,849          | \$923,108          | \$635,857         |
| 4           | \$893,564            | \$1,098,115          | \$890,873          | \$613,653         |
| 5           | \$862,366            | \$1,059,775          | \$859,769          | \$592,227         |
| 6           | \$660,578            | \$811,795            | \$658,589          | \$453,650         |
| 7           | \$646,500            | \$794,494            | \$644,553          | \$443,982         |
| 8           | \$631,414            | \$775,955            | \$629,512          | \$433,622         |
| 9           | \$615,219            | \$756,052            | \$613,366          | \$422,500         |
| 10          | \$597,801            | \$734,647            | \$596,000          | \$410,538         |
| 11          | \$579,035            | \$711,585            | \$577,291          | \$397,651         |
| 12          | \$558,786            | \$686,701            | \$557,103          | \$383,745         |
| 13          | \$536,903            | \$659,808            | \$535,286          | \$368,716         |
| 14          | \$513,220            | \$630,704            | \$511,674          | \$352,452         |
| 15          | \$487,556            | \$599,165            | \$486,087          | \$334,827         |
| 16          | \$459,710            | \$564,945            | \$458,325          | \$315,704         |
| 17          | \$429,462            | \$527,773            | \$428,169          | \$294,932         |
| 18          | \$396,571            | \$487,353            | \$395,377          | \$272,344         |
| 19          | \$360,770            | \$443,356            | \$359,684          | \$247,758         |
| 20          | \$321,767            | \$395,424            | \$320,798          | \$220,972         |
| 21          | \$279,238            | \$343,160            | \$278,397          | \$191,766         |
| 22          | \$232,830            | \$286,128            | \$232,129          | \$159,895         |
| 23          | \$182,153            | \$223,850            | \$181,604          | \$125,093         |
| 24          | \$126,778            | \$155,799            | \$126,396          | \$87,064          |
| 25          | \$66,233             | \$81,395             | \$66,034           | \$45,485          |

**EXHIBITS****LEASE AGREEMENT/CITY OF PALO ALTO & KOMUNA PALO ALTO LLC****Page EX-21**

Rev. 11/18/15

999020-empl

## Certificate Of Completion

|   |                                  |
|---|----------------------------------|
| Envelope Id: 09D09B17A2E04787B4B867BAA0A28C3F                                 | Status: Completed                |
| Subject: Please DocuSign: Komuna Lease Agreement Exhibits FINAL 1.14.2016.pdf |                                  |
| Source Envelope:  |                                  |
| Document Pages: 106   | Signatures: 4                    |
| Certificate Pages: 1  | Initials: 0                      |
| AutoNav: Enabled  | Envelope Originator:             |
| Envelopeld Stamping: Enabled  | Janet Billups                    |
| Time Zone: (UTC-08:00) Pacific Time (US & Canada)                             | 250 Hamilton Ave                 |
|   | Palo Alto , CA 94301             |
|   | janet.billups@cityofpaloalto.org |
|   | IP Address: 199.33.32.254        |


## Record Tracking

|                       |                                  |                    |
|-----------------------|----------------------------------|--------------------|
| Status: Original      | Holder: Janet Billups            | Location: DocuSign |
| 1/14/2016 10:03:46 AM | janet.billups@cityofpaloalto.org |                    |

## Signer Events

Zach Rubin  
 zrubin@komunaenergy.com  
 Security Level: Email, Account Authentication (None)

## Signature

DocuSigned by:  
  
 BC7A744C2E324AE...

Using IP Address: 24.130.60.185

## Timestamp

Sent: 1/14/2016 10:14:13 AM  
 Viewed: 1/14/2016 10:17:40 AM  
 Signed: 1/14/2016 10:21:48 AM

Electronic Record and Signature Disclosure:  
 Not Offered  
 ID:

| In Person Signer Events      | Signature        | Timestamp             |
|------------------------------|------------------|-----------------------|
| Editor Delivery Events       | Status           | Timestamp             |
| Agent Delivery Events        | Status           | Timestamp             |
| Intermediary Delivery Events | Status           | Timestamp             |
| Certified Delivery Events    | Status           | Timestamp             |
| Carbon Copy Events           | Status           | Timestamp             |
| Notary Events                |                  | Timestamp             |
| Envelope Summary Events      | Status           | Timestamps            |
| Envelope Sent                | Hashed/Encrypted | 1/14/2016 10:21:50 AM |
| Certified Delivered          | Security Checked | 1/14/2016 10:43:57 AM |
| Signing Complete             | Security Checked | 1/14/2016 10:43:55 AM |
| Completed                    | Security Checked | 1/14/2016 10:43:55 AM |