

**Attachment A to Agenda File No. 2021-0351****COVER PAGE****ENERGY SERVICES AGREEMENT**

<b>1.</b>	<b>AGREEMENT AND EFFECTIVE DATE:</b>	Energy Services Agreement (“ <b>Agreement</b> ”) between the Customer and the Seller (listed below) dated as of _____ (“ <b>Effective Date</b> ”)
<b>2.</b>	<b>CUSTOMER:</b>	San Diego Unified Port District, a public corporation in the County of San Diego, California Notice Address: 3165 Pacific Highway, San Diego, CA 92101 Customer Representative: Renée Yarmy, Program Manager – Energy & Sustainability; Tel.: 619-455-6782; Email: ryarmy@portofsandiego.org
<b>3.</b>	<b>SELLER:</b>	San Diego TAMT Solar Microgrid, LLC c/o EDF Renewables Distributed Solutions, Inc., a Delaware corporation Notice Address: <u>15445 Innovation Drive, San Diego, CA 92128</u> Seller Representative: <u>Michael Robinson</u> Tel.: <u>858.521.3416</u> Email: <u>michael.robinson@powerflex.com</u> Copy to: <u>Dov.ehrman@powerflex.com</u>
<b>4.</b>	<b>CUSTOMER PROPERTY; SITE:</b>	The System (defined below) will be installed on the “ <b>Property</b> ” at 802 Terminal Street, San Diego, CA 92101, on the Warehouse B roof, bays 5 and 6 of the Tenth Avenue Marine Terminal on the Property (“TAMT Roof Top”), and other areas designated on <b><u>Exhibit B</u></b> , collectively, the “ <b>Site</b> ”).
<b>5.</b>	<b>SYSTEM:</b>	A 706kW DC/ 755kW AC solar, photovoltaic, 1,243,000kWh electricity generation system located on the Tenth Avenue Marine Terminal (the “ <b>Solar Facility</b> ” or the “ <b>System</b> ”); Details about the System and System installation are on <b><u>Exhibit A</u></b> .
<b>6.</b>	<b>TERM:</b>	Effective Date through the twentieth (20 <sup>th</sup> ) <b>anniversary</b> of Commercial Operation Date (“ <b>Initial Term</b> ”), subject to extension for successive terms of five (5) years each (each a “ <b>Additional Term</b> ”), as provided in Agreement.
<b>7.</b>	<b>SOLAR ELECTRICITY:</b>	From COD through the last day of the Term, Seller will deploy the System to provide Solar Electricity and Services to the Customer. In consideration of Solar Electricity, Customer shall pay Seller the “ <b>Electricity Price</b> ” set forth on <b><u>Exhibit C</u></b> .
<b>8.</b>	<b>ENVIRONMENTAL ATTRIBUTES:</b>	Customer will be entitled to all Environmental Attributes (defined herein) associated with the System.
<b>9.</b>	<b>TAX BENEFITS</b>	Seller will be entitled to all Tax Benefits associated with the System
<b>9.</b>	<b>ACCOUNT NUMBER:</b>	8773051628
<b>9.</b>	<b>METER NUMBER:</b>	06685352
<b>10.</b>	<b>TARIFF RATE:</b>	ALTOU2C2

**SIGNATURE PAGE**

In furtherance of the development, construction, and operation of the System and the provision of Solar Electricity, and in consideration of the mutual covenants and other good and valuable consideration set forth in this Agreement, Customer and Seller agree to perform this “Agreement”, which includes the Cover Page, this Signature Page, the Terms and Conditions, the Schedule, and the Exhibits, in accordance with its terms.

**INTENDING TO BE LEGALLY BOUND**, Seller and Customer have signed this Agreement through their duly authorized representatives effective as of the Effective Date by their respective signatures below.

**SELLER:****CUSTOMER:****SAN DIEGO TAMT SOLAR MICROGRID, LLC****San Diego Unified Port District**By: Raphael Declercq \_\_\_\_\_

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

Name: Raphael Declercq \_\_\_\_\_

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

Title: President \_\_\_\_\_

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

Date: 12.22.2021 \_\_\_\_\_

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

## **ENERGY SERVICES AGREEMENT**

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. TERMS AND CONDITIONS INTEGRATED; DEFINED TERMS**

§ **1.1 Terms and Conditions.** These Energy Services Agreement Terms and Conditions hereby are incorporated into and made part of the Agreement.

§ **1.2 Defined Terms.** Capitalized terms used in this Agreement are defined on **Schedule 1.1.**

#### **ARTICLE 2. PURCHASE AND SALE OF PRODUCTS; OPERATION OF THE SYSTEM**

§ **2.1 Installation and Operation of the System.** Commencing on the Effective Date and continuing through the Commercial Operation Date, Seller, at Seller's sole cost (subject to Customer's obligations hereunder, including pursuant to § **3.1**) shall design, engineer, procure, and install the System. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Initial Term and any Additional Term (as defined on the Cover Page, and collectively the "**Term**"), Seller, at Seller's sole cost (subject to Customer's obligations hereunder) shall operate and maintain the System, conducting scheduled maintenance activities as outlined in **Exhibit F**, remove the System from the Site upon the expiration or termination of this Agreement, and shall deliver to Customer all of the electric energy generated by the Solar Facility ("**Solar Electricity**"). From the COD and throughout the Term, Seller shall, at its sole cost and expense operate and maintain the System in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and permits, Prudent Industry Practices, and the terms of this Agreement, and monitor the System's performance. Throughout the Term, Seller will have exclusive ownership and control of the System and all electricity transmitted to and including the Delivery Point.

§ **2.2 Certification of the System.** The Seller will provide all information and support necessary to ensure the certification of the System as a renewable energy resource under

applicable California Law, such as RECSYS, or any other renewable energy standard or environmental compliance program for which the System may qualify, it being understood that such certification is a material term of this Agreement. It will further be Seller's responsibility to assign the Environmental Attributes to Customer on a monthly basis in order that Customer may sell Environmental Attributes. Customer shall cooperate with Seller, at Seller's expense, to certify the System as a renewable energy resource under applicable California Law or any other renewable energy standard or environmental compliance program, Seller shall register the System with RECSYS and be responsible for all costs associated with such registration. Seller shall report the Solar Electricity of the System to RECSYS based on the readings of one or more Revenue Grade Meter installed as part of the System and located between the solar inverters and the single point of connection with the Customer's electrical system of the Delivery Point (each, a "**Delivery Point**") that shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility (each a "**System Meter**").

**§ 2.3 Purchase and Sale of Solar Electricity.** In consideration of the payment to Seller of the Electricity Price (defined below) as provided on **Exhibit C**, Customer shall purchase from Seller, and Seller shall sell to Customer, 100% of the Solar Electricity produced by the Solar Facility and all Environmental Attributes. The Solar Electricity generated by the Solar Facility will be measured at the System Meter at the Delivery Point. Customer shall take title to the Solar Electricity at the Delivery Point, and risk of loss will pass from Seller to Customer at the respective Delivery Point. Customer understands and agrees that Seller will be entitled to realization of the full benefit of any Tax Benefit, including any investment tax credits, attributable to any component of the System. Any purchase, sale and/or delivery of Solar Electricity prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

**§ 2.4 Solar Electricity Guarantee.**

**§ 2.4.1** Subject to § 2.4.2, for each Guarantee Year, Seller guarantees to Customer that the Actual Annual Electricity for such Guarantee Year will equal or exceed the Guaranteed Annual Electricity for such Guarantee Year.



§ 2.4.2 The existence of a Shortfall in any Guarantee Year shall not be a breach or default by Seller hereunder so long as, within sixty (60) days after the conclusion of the Guarantee Year in which a Shortfall occurs, Seller pays to Customer cash equal to the total Shortfall amount multiplied by the Electricity Price applicable during such Guarantee Year.

§ 2.4.3 A “**Shortfall**” means any positive difference, expressed in kWh, between the Guaranteed Annual Electricity and the Actual Annual Electricity for a Guarantee Year.

§ 2.4.4 A “**Guarantee Year**” means (a) the period of eighteen calendar months, commencing the sixth calendar month after the Commercial Operation Date and ending on the day before the second anniversary of the Commercial Operation Date; or (b) any period of twelve consecutive calendar months commencing on the second anniversary of the Commercial Operation Date and ending on the day prior to the subsequent anniversary of the Commercial Operation Date through the tenth (10th) anniversary of the Commercial Operation Date.

§ 2.4.5 Attached hereto as Exhibit “E” is a written calculation of the amount of Solar Electricity that the Solar Facility is expected to produce during each Guarantee Year as determined based on a PVSyst energy model for the Solar Facility (“**Expected Annual Electricity**”). The Expected Annual Electricity is multiplied by a factor of 0.9 and further reflects System equipment degradation over time as determined by the panel manufacturer and other customary and standard adjustments (“**Guaranteed Annual Electricity**”).

§ 2.4.6 The “**Actual Annual Electricity**” means: (a) all Solar Electricity delivered to the Delivery Point during a Guarantee Year, determined based on System Meter data for such Guarantee Year; plus (b) all Solar Electricity that Seller reasonably can demonstrate would have been delivered to the Delivery Point during such Guarantee Year, but for any of the following that occurs or continues during such Guarantee Year, provided Seller takes all reasonably necessary actions to mitigate or limit any interruption to Solar Electricity generation caused by any of the following: (i) an Exclusion Event adversely affecting the Solar Facility; (ii) Solar Facility downtime for standard maintenance necessary to keep the System operating at peak efficiency (not to exceed three (3) days per year and provided that to the extent possible, such maintenance will occur in off-peak hours for solar energy production, and (iii) damage to the Solar Facility not caused by Seller or its agents or for which Seller or its agents is not responsible under this Agreement, provided that Seller shall provide reasonable notice to Customer of such damage and shall work with Seller to make repair such damage at Seller’s sole expense, (iv) adjustments due to a Weather Adjustment (as defined below), and (v) any Solar Facility downtime due to a Customer Curtailment; plus (c) the positive difference, if any, between the Actual Annual Electricity for the prior Guarantee Year and the Guaranteed Annual Electricity for the prior Guarantee Year, up to 20% above the Guaranteed Annual Electricity.

§ 2.4.7 “Weather Adjustment” means an annual adjustment to the Expected Annual Electricity to take into account a reduction in the actual Solar Electricity production of the System in kWh during any Guarantee Year or other applicable period of time pursuant to this Agreement, due to diminished solar insolation as measured from onsite weather data obtained from the System weather station or a nearby government weather station for the same period. The Weather Adjustment is calculated by multiplying the Expected Annual Electricity by the following ratio:  $SEMMY/EAE$ , where:

“SEMMY” or Simulated Energy in a Measured Meteorological Year, means, with respect to any Guarantee Year, the projected generation of the System simulated by PVSyst using actual measured average hourly irradiance, wind speed, and air temperature as recorded by the data acquisition system, holding all other inputs equal to those used in calculating the Expected Annual Electricity, provided that data exclusion from the SEMMY calculation is acceptable during major weather events where the meteorological sensors may not accurately represent the soiling of panels; and

“EAE” means the Expected Annual Electricity.

The Weather Adjustment only applies when the ratio of  $SEMMY/EAE$  is less than 1. An example of the calculation of the Weather Adjustment and how it impacts that Guaranteed Annual Electricity for a Guarantee Year is set forth in Exhibit “E”.

### **ARTICLE 3. CONSIDERATION; SYSTEM OPERATIONS**

#### **§ 3.1 Consideration.**

§ 3.1.1 *Electricity Price.* From and after the Commercial Operation Date, Customer shall pay Seller monthly for the Solar Electricity delivered to the Delivery Point, at the \$/kWh rate shown in **Exhibit C** (the “Electricity Price”). The monthly payment for Solar Electricity will be equal to the applicable \$/kWh rate multiplied by the number of kWh of Solar Electricity generated during the applicable month, as measured by the System Meter and delivered to the Delivery Point(s). Seller shall invoice Customer monthly for Solar Electricity. Such monthly invoices shall state (i) the amount of Solar Electricity produced by the System and delivered to the Delivery Point, (ii) the Electricity Price payable by Customer under this Agreement for such Solar Electricity, as provided on **Exhibit C**, (iii) applicable taxes and charges payable by Customer for the month as provided in this Agreement, and (iv) the total amount due from Customer for Solar Electricity. Customer will have the option to make payments electronically.

§ 3.1.2 *Tax Benefits.* Seller shall be entitled to all Tax Benefits with respect to the System.

§ 3.1.3 *Termination Charges.* Upon termination of this Agreement, Customer may be

required to pay a Termination Charge in accordance with **Exhibit C, Exhibit D, and Exhibit E.**

**§ 3.2 Governmental Charges.** Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions as to minimize Governmental Charges. Customer shall either pay or reimburse Seller for any and all Governmental Charges assessed on the production, generation, sale, delivery or consumption of all Solar Electricity produced by the System or the interconnection of the System to the Utility's electric distribution system. Seller is responsible for all personal property taxes that are assessed solely with respect to the installation and additional value of the System. In the event provision of Solar Electricity provided hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion. Seller is responsible for local, state and federal income taxes attributable to Seller for income received under this Agreement. Customer is responsible for all Governmental Charges attributable to the provision of the Solar Electricity from Seller to Customer customarily charged by the electric Utility serving Customer or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of the Solar Electricity to Customer.

**§ 3.3 Service Warranty.** For the period commencing the Commercial Operation Date and ending on the date this Agreement is terminated, Seller will maintain and operate the System, including System support, System problem diagnosis, on-Site repair, and preventative maintenance as required to enable the delivery of Solar Electricity pursuant to the requirements of this Agreement, including the production of Solar Electricity consistent with the obligations of Seller pursuant to Section 2.4 (the "**Service Warranty**").

**§ 3.4 Manufacturer Warranties Generally.** **Exhibit H** includes a listing of the term of the manufacturer warranties covering each of the Major Materials identified on **Exhibit H**.

**§ 3.5** Except as provided in this Section or in **ARTICLE 10**, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING

FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Customer's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

**§ 3.6 Curtailment; Relocation.** Customer may curtail, shut down, or otherwise interfere with the delivery of the Solar Electricity to the Delivery Point by the Solar Facility (a "**Customer Curtailment**") without the prior written consent of Seller to support Customer's day to day operations. The Customer will have the right to suspend delivery of energy for an aggregate period of twenty (20) days (on an hourly basis) over the duration of the Term, not to exceed a period of two (2) days (on an hourly basis) during any Contract Year for roof and building maintenance or other causes which are particular to the Customer, but provided, however, that if roof and building repair during any year is necessary to maintain the integrity of the roof or to upgrade the electrical system that serves the building, then Customer will have up to seven (7) days during any single Contract Year on a one time basis during the Term to complete such repairs, and will have no obligation to pay Seller during such permitted outage ("**Permitted Curtailment**"). Any Solar Electricity that is not delivered to the Delivery Point as a result of a Customer Curtailment shall be quantified by Seller as soon as practicable after the Customer Curtailment occurs. Customer shall compensate Seller for Solar Electricity in excess of the Permitted Curtailment, that, but for a Customer Curtailment, would have been utilized at the Delivery Point in accordance with **Exhibit C**. Customer will have the right to request the Seller to relocate the Solar Facility during the term of this Agreement at the sole cost and expense of the Customer, including the cost of lost Solar Electricity attributable to the relocation during the relocation period.

**§ 3.7 Emergencies; Malfunctions.** Each Party shall notify the other (i) immediately upon becoming aware of any emergency condition with respect to the System, or the Site that could reasonably be expected to pose an imminent threat to the safety of persons or property and (ii) within twenty-four (24) hours after becoming aware of any other malfunction of the System, or interruption in the supply of electricity from the System. Each Party shall designate personnel to be notified in the event of such an emergency or interruption and shall advise the other Party of such personnel and any changes in such personnel. To the extent the conditions that caused the emergency, malfunction or

interruption are attributable to the System, Seller shall correct, or cause to be corrected, such conditions as soon as reasonably possible in light of the circumstances following the giving of notice to Seller by Customer or upon otherwise becoming aware of such emergency, malfunction or interruption; *provided, however*, that Seller may invoice Customer on a time and materials basis for any such corrective action required due to any act or omission of Customer that is not in accordance with this Agreement. Seller shall have real time monitoring systems that are accessible by Customer and notify both Customer and Seller promptly if a malfunction or emergency have occurred and the panels are not generating as they are intended.

**§ 3.8 Destruction of System.** If the System is substantially damaged or destroyed, other than due to the negligence or willful misconduct of Seller, Seller will have the right, exercisable upon written notice to Customer, to terminate this Agreement or to repair and restore the System and receive from Customer the proceeds of any insurance maintained by Customer that cover the loss relating to such damage or destruction of the System, except to the extent that Customer's insurance proceeds are specifically provided for the purpose of covering Customer's increased costs and losses resulting from the need to procure electricity at costs higher than those that would have been incurred if the System was functioning . Any such Customer insurance proceeds shall be used to defray such increased costs and expenses of Customer before any proceeds will be transferred to Seller. If the damage or destruction is the result of a fault in the System or the negligence or willful misconduct of Seller, then Seller will use the proceeds from its insurance coverage for the System to repair or replace the System. If Seller elects to repair and restore the System, the Parties will work in good faith to promptly agree on a scope of work and schedule for repair and restoration work and a possible extension of the Initial Term. All obligations of Seller to provide Solar Electricity will be suspended from the date of substantial damage or destruction of the System that is not caused by Seller through termination of this Agreement or, as applicable, restoration and repair of the System.

#### **ARTICLE 4. SYSTEM DESIGN, APPROVALS, AND INSTALLATION**

**§ 4.1 Installation of System.** Seller, at Seller's cost (subject to Customer's obligations hereunder) will furnish, undertake, procure, and provide or cause to be performed,

furnished, undertaken, procured and provided, all materials and work for the design, engineering, procurement, construction, installation, interconnection, including the interconnection to the Customer's Solar Microgrid System and the completion of the Rule 21 Interconnection application, testing, start-up and commissioning of the System at the Site, diligently and in a good and workmanlike manner and in accordance with this Agreement, including the Scope of Work attached as **Exhibit A**, the System Plans approved by Customer, and in accordance with all applicable Laws, reasonable safety and security requirements of the Customer for access to the Property ("Customer Requirements"), a copy of which have been provided to Seller and are subject to change upon reasonable notice to Seller (provided that no such change to the Customer Requirements shall result in any material cost to Seller), and Prudent Industry Practices. Customer shall provide to Seller all information reasonably requested by Seller to safely, efficiently, and effectively install and operate the System (e.g., Property-specific electrical plan drawings and schedule of operations).

#### § 4.2 Unforeseen Site Conditions; Interconnection.

§ 4.2.1 Customer will be responsible for any work, and all related costs arising due to unforeseen conditions at the Property or Customer-caused matters, including: (i) unforeseen site conditions (e.g. – hazardous or archeological materials at the System Site); (ii) changes to the Scope of Work directed by Customer and not resulting from a design or Scope of Work change caused by Seller; and (iii) corrections of pre-existing code violations at the Property. Seller may require Customer to perform and pay for such additional work or Seller may perform such additional work and charge the Customer therefor. Seller shall provide documentation of charges invoiced by Seller under this Section; and Customer shall pay all undisputed portions of any invoiced charges under this Section within 15 days after invoice delivery to Customer.

§ 4.2.2 The System will be capable of being electrically interconnected to the Customer's 480 V electric distribution system, also referred to as the "Customer's Solar Microgrid System", and the Utility distribution network without undue delay in achievement of the Commercial Operation Date or undue costs. Customer will be responsible for, and shall pay when due, all Utility-imposed costs, including upgrades to the Customer's 480 V and 12 kV electrical systems, and similar Utility interconnection-related costs, or any other costs in connection with any Utility required upgrades. At Customer's request, Seller can assume responsibility for and pay when due any such interconnection-related costs that otherwise are the responsibility of Customer, upon mutual agreement of Customer and Seller, with Seller's agreement being conditioned on an equitable increase in the Electricity Price, as

mutually agreed, to compensate Seller for the assumption of such costs.

**§ 4.2.3 Approvals.** Seller will apply for, pay application and related fees, unless otherwise provided on **Exhibit C**, for, and will use reasonable efforts to secure with respect to the installation and operation of the System, all required Approvals, including: (i) all required approvals and permits from Governmental Authorities; and (ii) approval from the Utility. Customer will reasonably and without delay assist Seller in obtaining any Approval. Upon delivery of a termination notice to the Customer, Seller shall have the right to terminate this Agreement without further liability if any Approval reasonably cannot be secured on a timely basis.

**§ 4.3 Design; Plans.** Seller will submit to the Customer a draft of the schedule and plans for the installation of the System, including construction drawings, one-line diagram, and Equipment specifications, (the “**System Plans**”). The System Plans will conform to the plans and specifications provided by Seller to Customer in response to Customer’s Request for Proposals 21-05. Customer will have fourteen (14) calendar days after submission to review, comment on, or approve the draft System Plans. The Parties will endeavor in good faith to integrate the reasonable comments of Customer into the System Plans and to agree on final System Plans within thirty (30) calendar days after the initial submission of draft System Plans to the Customer. The on-site System work will not begin until the date the System Plans are finally agreed by the Parties and all necessary Approvals for the System have been obtained pursuant to this Agreement. If the System Plans cannot be mutually agreed and finalized within sixty (60) days after the initial submission of the draft System Plans to Customer, Seller may terminate this Agreement without further liability to Customer upon delivery of a written termination notice to Customer.

**§ 4.4 Title and Risk of Loss.** The System will be and remain the sole property of Seller and Customer will have no ownership or other interest in the System (other than pursuant to exercise by Customer of any buy-out right). Notwithstanding that the System, or portions thereof may be attached to the Property, the System are and will remain personal property of the Seller and shall not be or be deemed fixtures. Subject to Customer’s obligations under this Agreement, Seller will bear all risk of loss or damage to the System.

**§ 4.5 Liens.** Seller will not grant or suffer to exist any liens on or security interests in the Property or, after completion of any installation thereof; however, Seller is not prohibited



from granting liens, encumbrances, or security interests on or in the System. Seller shall have no power or authority to do any act or thing, or to make any contract or agreement which will bind the Customer. Customer shall have no responsibility to Seller, except as expressly provided in this Agreement. Customer shall have no responsibility to any person who performs, causes to perform, engages in or participates in any construction, modification, repairs, maintenance, or alterations of the System. Seller shall give written notice to all contractors, subcontractors and materialmen of Customer's non-responsibility in connection with the System, and shall provide Customer with copies of such notices not less than fifteen (15) days prior to the commencement of any work on the System.

**§ 4.6 Subcontracting.** Seller may subcontract Seller's obligations under this Agreement to any Affiliate or third party; provided, that ( 1 ) Seller shall at all times remain responsible for the performance of Seller's obligations under this Agreement and for its subcontractors' compliance with the terms of this Agreement and (2) Customer consents to any subcontractor(s) with a value exceeding two hundred and fifty thousand Dollars (\$250,000).

**§ 4.7 Conditions Precedent.** The obligation of Seller to move forward with the commencement of construction pursuant to Section 4.8, are conditioned upon the satisfaction in full, or waiver by Seller, of the following conditions:

**§ 4.7.1** Customer shall have complied with Customer's obligations under **§ 5.1**;

**§ 4.7.2** Seller shall have obtained or caused others to have obtained, and Customer shall have provided commercially reasonable cooperation in connection with obtaining, all Approvals;

**§ 4.7.3** Seller shall have secured and Customer shall have approved or, as necessary, executed and delivered, all documents and agreements required by the Utility in connection with this Agreement, including an interconnection agreement, and the transactions contemplated hereby (collectively, "**Utility Documents**") to the reasonable satisfaction of Seller, or the Utility shall have waived the requirement for such Utility Documents;

**§ 4.7.4** Customer has entered into a Memorandum of Understanding (the "Tenant MOU") with its tenant (the "Tenant") in the form attached hereto as Exhibit I Tenant MOU for the Property to share roof space and that this document will govern Seller's access to the site as required for the installation and operation of the System as set forth hereunder for the duration of the Term;

**§ 4.7.5** Seller shall have secured approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "**Construction Agreement**" as used in



this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

§ 4.7.6 No change in law that, individually or when aggregated with other prior changes in law, has occurred that would adversely affect the economic arrangements of Seller and Customer under this Agreement;

If any of the foregoing requirements have not been satisfied prior to the date for the commencement of construction pursuant to Section 4.8, and the failure to satisfy the condition is not the result of the failure of Seller to make commercially reasonable efforts to pursue applicable permits and approval on a timely basis, Seller shall have the right to terminate this Agreement without penalty or any liability to Customer, effective upon written termination notice to Customer detailing the unsatisfied condition or conditions.

#### § 4.8 Construction.

§ 4.8.1 **Construction.** Customer shall provide to Seller all required Site access on or before March 1<sup>st</sup> 2022. . Customer will not be responsible for any costs to Seller resulting from any delay in the construction and installation which is the result of the failure of the contractor for the installation of the microgrid and other improvements to the electrical system of Customer to be completed on schedule or resulting from any other failures of such contractor in the installation of the microgrid and other improvements to the electrical system, however, any such delay will be an excused delay for the commencement of construction and installation of the System by Seller and all other milestone dates will be adjusted accordingly, and Seller shall not be responsible or required to incur any additional costs resulting from any such failures. To the extent that Seller incurs additional costs of construction that cannot be reasonably avoided as a result of the aforementioned delay which are not the direct result of the failure of the contractor for the installation of the microgrid or if Customer is actually paid liquidated damages by the microgrid contractor in connection with the delay, then the Parties shall negotiate in good faith a reasonable adjustment of pricing to mitigate Seller's additional costs. Seller shall not commence or be required hereby to commence any System construction activity on the Site unless or until all Approvals required to construct and install the System have been secured by Seller and Seller has coordinated with, and received approval from, Customer's General Contractor with respect to the Seller's schedule for construction of the System on the Property and the Site.

§ 4.9 **Commercial Operation Date.** Seller covenants that the Commercial Operation Date of the System shall occur on or before December 31<sup>st</sup> 2022. The Commercial Operation Date will be subject to extension in the event of delays (i) that are outside of the reasonable control of Seller (other than acts of Seller's Affiliate); (ii) that are caused by

the failure of Customer to fulfill the Customer's Obligations; or (iii) as otherwise provided in this Agreement. Seller shall notify Customer in writing of the actual Commercial Operation Date. In the event that the System does not commence delivery of Solar Electricity as of the Commercial Operation Date, as the same may be extended herein, then Seller shall pay to Customer that sum of One Hundred Thirty Nine dollars (\$139.00) per day until the Commercial Operation Date to compensate Customer for the loss of energy savings. In the event that the Solar Facility is not operational within one (1) year of the Commercial Operation Date, as the same may be extended herein, then Customer will have the right to terminate this Agreement.

§ 4.10 If, prior to or during the construction of the System (but not within the first six (6) months following the Effective Date), the cost of equipment or materials required for the System (e.g., PV module manufacturer, inverter manufacturer) increases by more than twenty-five percent (25%) relative to the prices of such equipment as of the Effective Date, and such increase is not attributable to or the fault of Seller, then the Parties shall negotiate in good faith (before Seller completes or executes any agreement for any purchase of replacement equipment or materials) an adjustment to the pricing of energy on a per kWh basis hereunder to reflect such excess additional costs; provided, however, that any obligation to engage in good faith negotiations is premised on Seller having initially ordered or procured such equipment and/or materials, or made best efforts to order or procure such equipment and/or materials (where best efforts in this regard shall mean, inter alia, Seller not choosing to delay the purchase of such equipment and/or materials in a manner that is (1) on the basis of a price increase or (2) reasonably likely to impact the construction schedule), within the first six (6) months following the Effective Date. In addition, if a supplier of the System (e.g., PV module manufacturer, inverter manufacturer) cancels an order for equipment or materials without the consent of Seller (and not as a result of Seller's failure to pay an deposit or other amount when due) or otherwise defaults in its obligation to deliver conforming equipment and materials to the Site as agreed with Seller, and it becomes necessary for Seller to procure replacement equipment and materials from another supplier, then Seller will use its best efforts to procure such replacement equipment and materials in a manner that has the lowest impact on the construction schedule and cost to build the System. In the event that the procurement of replacement equipment or materials results in a delay to the construction schedule, Seller will inform Customer of the duration of such delay and the delay will be an excused delay

pursuant to the terms of this Agreement; furthermore, in the event that the cost of the replacement equipment or materials is in excess of the original cost by more than fifteen percent (15%), then the Parties shall negotiate in good faith (before Seller completes or executes any agreement for any purchase of replacement equipment or materials) an adjustment to the pricing of energy on a per kWh basis hereunder to reflect such excess additional costs.

## **ARTICLE 5. CUSTOMER OBLIGATIONS.**

**§ 5.1 Customer Deliverables.** Prior to or as soon as possible after the Effective Date, Customer shall have delivered to Seller: (a) if required by Seller's financing party, a Site lease, or other document similar in substance, memorializing Seller's right to the use of the Site for the System as set forth in Section 5.2; and (b) executed authorization(s) allowing Seller to access all new electric utility bills, account information, and usage data for the Customer's usage at the Property for the duration of the Term (updates may be required throughout the Term).

### **§ 5.2 Site Matters.**

**§ 5.2.1 *Site License and Access Rights.*** From the Effective Date, throughout the Term, and through the last day of any removal period under **§ 6.4.1**, in consideration for the covenants, agreements and conditions herein to be observed by Seller, Customer hereby grants to Seller and its agents, contractors, and subcontractors (collectively, the "Permitted Licensees") the use of the Site, as set out in **Exhibit B**, for the purposes of installing, operating, maintaining, repairing, replacing, modifying, or decommissioning the System, and performing its obligations hereunder, including any interconnection rights, together with reasonable rights of access, ingress and egress to and from the Site over the Property. Seller acknowledges that Customer leases the Property to a Tenant and that Customer retains all rights on its own behalf and for the benefit of the Tenant to use portions of the roof adjacent to the Site for its own solar installations provided that such installations do not interfere with the System. Customer and the Tenant have entered into the Tenant MOU with respect to the cooperative use of the roof and the performance of roof maintenance and repair which allows for access and use of the Site by the Permitted Licensees. The Permitted Licensees may access the Site and the Property: (i) at any time during the Term, upon two (2) calendar days' prior notice from Seller to Customer, the Customer will then communicate access needs with the Tenant; (ii) from the date Seller mobilizes at the Site to commence construction through the COD and any removal period during business hours (8am-5pm Monday through Friday, with the exception of holidays), and (iii) in the event there is a failure of the System, an imminent

risk to safety or destruction of property, immediately without notice if such notice is not reasonably feasible; provided that, at all times when present on the Site and any person acting by or through Seller will comply with Customer Requirements. The Site is located on the Customer's Tenant Avenue Marine Terminal (TAMT). All Seller personnel accessing TAMT are required to obtain a *Transportation Worker Identification Credential* (TWIC) Card from the Transportation Security Administrator (TSA) for unescorted access or otherwise maintain compliance with the Maritime Transportation Security Act. Customer shall make available to Seller a mutually satisfactory lay-down and staging area at the Property for the installation and removal of the System. Customer will be responsible for any delays or any damages as a result of Customer's or Customer's tenant's failure to provide, secure, or maintain access to, and use of, the Property and the Site as provided in this Agreement. Seller will use reasonable efforts to avoid interference with Tenant's use of the Property and Seller will be responsible for any damage or destruction to the Property, including the roof and its support structure, or any of the personal property or equipment of tenant that is caused by negligent acts or omission of Seller's employees, agents or subcontractors.

**§ 5.2.2 Site Condition.** Following the installation of the System, neither Customer or its tenant will make any installation or take any action at the Site which would impair or impede Seller's ability to access and operate the System as necessary to perform its obligations under this Agreement, including without limitation, blocking in any manner the insulation necessary for the System at the Site. Customer will maintain the existing building and roof at the Site as necessary to provide for the structural integrity of the Site, provided, however, that Customer is not responsible for any structural upgrades to the roof that have not been identified by Seller pursuant to the terms of this Agreement.

**§ 5.3 Security.** Throughout the Term, Customer shall enforce the same security measures for access to the building upon which the System is located as it does for the rest of the Site.

**§ 5.4 Notice.** Customer shall notify Seller immediately of any issues or potential issues affecting the System of which Customer becomes aware, including any evidence of malfunction or potential threat to the System or safety or property.

**§ 5.5 System.** During the Term, Customer shall not, directly or indirectly, modify, repair, move or otherwise tamper with the System in any manner without Seller's prior written consent; provided, however, that the foregoing shall not preclude Customer from taking all reasonable action necessary in response to emergency or safety issues at the Site. Seller will cooperate with Customer to remove and reinstall the System, at Customer's

expense, if work is necessary on the underlying structure of the building or the roof at the Property, provided, however, that Customer will be obligated to pay for Solar Electricity that would have otherwise been provided by Seller during such period.

**§ 5.6 Liens.** Customer will not grant or suffer any other person to grant, and hereby expressly waives, all existing and future statutory, common law, and other liens or encumbrances on the System. To the extent that any such lien or encumbrance arises and cannot be waived under applicable Law, Customer hereby subordinates any such lien in favor of Customer to all existing and future liens and security interests in favor of the lenders and financing parties of Seller, and Customer will cooperate with Seller to obtain non-disturbance and subordination agreements, or such other necessary agreements, from any person with an encumbrance or any other mortgage, deed of trust, lease or other lien to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights of Seller in and to the System.

**§ 5.7 Damage to Deliverables.** If Customer, its contractors or agents damage the System, the Customer shall be liable to Seller for all required repairs, including all costs in connection with diagnosing the issue; and the obligation of Seller to provide Solar Electricity shall be suspended until such damage is repaired and the System is restored, provided Seller shall provide reasonable assistance and cooperation, at Customer's sole cost, for the repair of the System. Any amounts payable by Customer pursuant to this Section shall be due within thirty (30) days of Customer's receipt of an invoice therefor from Seller.

**§ 5.8 Customer Obligations to Enable Solar Electricity Delivery.** To enable the delivery of Solar Electricity, Customer shall not install or permit the installation of any improvement, including the planting of any vegetation, on or near the Site that could impair the access of the Solar Facility to sunlight.

**§ 5.9** Seller shall be responsible for any delay or curtailment in production as a result of Hazardous Materials on the Site that are used, stored, generated, or disposed of by Seller or its Affiliates ("**Seller Hazardous Materials**"). Customer will be responsible for liability imposed on Seller arising from the presence on this Site of Hazardous Materials that are a result of pre-existing contamination or the introduction of Hazardous Materials as a result of the actions of Customer. Any delay or curtailment

in production of the System as a result thereof shall also be treated as a Customer Curtailment.

## **ARTICLE 6. TERM; TERMINATION; DEFAULT; SURVIVAL.**

§ 6.1 **Term.** The “Term” under this Agreement is the period commencing on the Effective Date and ending on the last day of the Initial Term or of any Additional Term, in each case, subject to early termination as expressly provided in this Agreement. At least 180 days prior to the last day of the Initial Term or the last day of the first Additional Term, as applicable, each of Seller or Customer may deliver to the other Party a written request to extend the then-current Term for an Additional Term. During the 90-day period following delivery of an extension notice, the Seller and Customer will negotiate the terms and conditions applicable to a possible Additional Term in good faith. To the extent that, following such negotiation, the Parties agree to extend the Term for an Additional Term, the Term shall be extended, and this Agreement shall continue in effect, for such Additional Term, subject to any changes mutually agreed by the Parties.

§ 6.2 **Termination upon Default.** Either Party may terminate this Agreement, or suspend its performance hereunder, upon the occurrence of any of the following (each, an “**Event of Default**”) by or with respect to the other Party (the “**Defaulting Party**”):

§ 6.2.1 The Defaulting Party commits a material breach of this Agreement (excluding breaches described in § 6.2.2), unless such breach is cured within thirty (30) days following written notice thereof;

§ 6.2.2 The Defaulting Party commits a material breach of this Agreement as to the other Party’s Confidential Information or Proprietary Rights, unless such breach is cured within fifteen (15) days following notice thereof.

§ 6.2.3 The Defaulting Party becomes insolvent or the subject of any proceedings under any bankruptcy, insolvency or liquidation Laws, which proceedings are not resolved favorably to the Defaulting Party or dismissed within sixty (60) days, makes a general assignment for the benefit of creditors, ceases conducting business in the normal course, or has a material portion of its assets relating to or serviced by the System attached.

§ 6.2.4 Any event expressly identified by this Agreement as an “Event of Default.”

§ 6.3 Other Termination Rights.

§ 6.3.1 *By Seller.* Seller will have the right to suspend or terminate this Agreement upon one

or more of the following: (a) if a court or administrative order has the effect of subjecting the provision and/or sale of any Product to federal or state regulation of prices and/or service, (b) upon failure of any condition set forth in § 4.7, which is not the result of a failure of Seller as described therein, (c) if Tax Benefits, providing value to Seller with respect to the System or any Project, are diminished or eliminated, due to a Change of Law or other change or circumstance that is not the result of negligent or willful acts or failures of Seller which occurs prior to the commencement of construction; or (d) an Exclusion Event occurs that cannot be remedied within six (6) months of the date the Exclusion Event occurs.

**§ 6.3.2 *Prior to Commencement of Installation Work.*** This Agreement may be terminated prior to commencement of the installation of the System without further liability of the Parties, including without any obligation of the Customer to pay a Termination Charge, if: (a) Customer is unable to obtain written authorization (in form reasonably satisfactory to Seller) from any owner, lessor, tenant, mortgagee, or other party with an interest in the System Site or the Property; or (b) the Parties reasonably determine that the System Site conditions are not optimal for installation of the System and there is no replacement site at the Property; or (c) Seller cannot obtain financing. If Customer is the terminating Party under this Section, Customer must provide Seller with written notice of termination no later than the sixty (60) calendar days after the Effective Date, and, in any event, thirty (30) days before Seller commences installation of the System. Any termination notice provided by Customer under this Section after such deadline will be ineffective under this Section.

**§ 6.3.3 *Termination by Customer.*** If this Agreement remains effective as of such date and Seller fails to achieve the Commercial Operation Date for the System as of December 31<sup>st</sup>, 2023 and not attributable to Force Majeure Event, Utility delay beyond the reasonable control of Seller, or Customer breach or Event of Default hereunder, then Customer shall have the right to terminate this Agreement by delivering a written termination notice to Seller within thirty (30) days of such date.

**§ 6.3.4 *As Otherwise Provided in this Agreement.*** This Agreement may be terminated by either Party in accordance with the express provisions of this Agreement.

#### **§ 6.4 Effects of Termination or Expiration.**

**§ 6.4.1** Upon expiration or termination of this Agreement for any reason, other than purchase of the System by Customer pursuant to ARTICLE 11, Seller shall remove the System, and any Seller personal property from the Property and restore the roof and supporting building structure to its original condition (normal wear and tear excepted) in accordance with a schedule to be mutually agreed between



the Parties (but in no event more than one hundred and twenty (120) days following such expiration or termination). Seller will notify Customer of the completion of such removal within five (5) days of the completion thereof and Customer and Seller will perform a joint walk through and inspection of the Property within thirty (30) days of such notice to confirm that no damage to the Property has occurred as a result of removal. Seller shall be liable for and bear the costs of any damage caused by Seller's or its contractor's negligence in removal of the System, including the voiding of any warranties. Except in the event this Agreement is terminated by Seller pursuant to § 6.2, Seller shall be solely liable for all costs and expenses in connection with the foregoing.

§ 6.4.2 Within thirty (30) days following the expiration or termination of this Agreement, Customer shall pay to Seller all outstanding amounts owed to Seller under this Agreement, including any Termination Charge.

§ 6.5 **No Prejudice.** Termination of this Agreement pursuant to its terms, in whole or in part for any reason, shall not affect any liabilities or obligations of either Party arising before such termination or out of events causing such termination, or any damages or other remedies to which a Party may be entitled under this Agreement, at Law or in equity.

§ 6.6 **Survival.** The provisions of this Agreement which, by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the termination or expiration of this Agreement shall survive and continue to bind the Parties, including § 4.4, § 4.5, § 5.6, § 5.7, Error! Reference source not found., § 6.4.2, § 6.5, **ARTICLE 8,** and **ARTICLE 11.**

## **ARTICLE 7. INSURANCE**

§ 7.1 **Insurance Requirements of Seller.** Seller shall maintain, at its sole cost and expense, the insurance coverage required to be maintained by Seller in accordance with **Exhibit D.**

§ 7.2 **Insurance Requirements of Customer.** Customer shall maintain, at its sole cost and expense, the insurance coverage required to be maintained by Customer in accordance with **Exhibit D.**

## **ARTICLE 8. INDEMNIFICATION; LIMITATIONS OF LIABILITY.**



**§ 8.1 By Seller.** To the fullest extent permitted by law, Seller shall defend, indemnify and hold harmless Customer, its, Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses to the extent resulting from any third-party claim, demand, suit, action or proceeding (each, a “**Claim**”) that, if true, would establish:

§ 8.1.1 bodily injury (including death) or damage to real or tangible personal property caused by the willful, fraudulent or negligent (whether active or passive) acts or omissions of Seller during the performance of this Agreement;

§ 8.1.2 which negatively affects separate contractors on adjoining or overlapping work (this obligation is not limited by, and is in addition to, the performance bonds required by the Agreement);

§ 8.1.3 that the System, as installed and maintained by or on behalf of Seller, infringes, misappropriates, or otherwise violates any third party’s Proprietary Rights.

In no event shall this indemnity apply to any Claim arising through the sole negligence, willful misconduct, or active negligence (as provided by California Civil Code section 2782) of the Customer, its Affiliates and its and their officers, directors, employees, agents, successors, and assigns.

**§ 8.2 By Customer.** To the fullest extent permitted by law, Customer shall defend, indemnify, and hold harmless Seller, its Affiliates, and its and their officers, directors, employees, agents, successors and assigns from and against all Losses to the extent resulting from any Claim that, if true, would establish:

§ 8.2.1 bodily injury (including death) or damage to real or tangible personal property caused by caused by the willful, fraudulent, or negligent (whether active or passive) acts of Customer;

In no event shall this indemnity apply to any Claim arising through the sole negligence, willful misconduct or active negligence (as provided by California Civil Code section 2782) of the Seller, its Affiliates and its and their officers, directors, employees, agents, successors and assigns.

**§ 8.3 Indemnification Procedures.** The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Claim and cooperate with the indemnifying Party at the indemnifying Party’s sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the indemnifying

Party's sole cost and expense. The indemnified Party's failure to perform any obligations under this **§ 8.3** shall not relieve the indemnifying Party of its obligations under this Article, except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense. Notwithstanding any else to the contrary herein, any claims under the Agreement may only be made until no later than two (2) years following termination of this Agreement.

**§ 8.4 Disclaimer of Certain Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES PROVIDED THAT PAYMENTS MADE PURSUANT TO THE SOLAR ELECTRICITY GUARANTEE UNDER SECTION 2.4, INDEMNIFICATION CLAIMS UNDER SECTION 8 OR TERMINATION CHARGES UNDER EXHIBIT C SHALL BE DEEMED TO BE DIRECT DAMAGES THAT ARE NOT LIMITED UNDER THIS SECTION 8.4.

**§ 8.5 Monetary Cap.** EXCEPT AS OTHERWISE PROVIDED IN **§ 8.6**, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED ONE MILLION DOLLARS (\$1,000,000); PROVIDED THAT A PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO INDEMNIFICATION CLAIMS PURSUANT TO SECTION 8 RESULTING FROM PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH, OR CONSTRUCTION DEFECTS, SHALL NOT EXCEED ONE MILLION DOLLARS (\$1,000,000). NOTHING CONTAINED HEREIN IS INTENDED TO LIMIT THE AMOUNT OF INSURANCE COVERAGE AVAILABLE FOR A COVERED CLAIM BY A PARTY IN ACCORDANCE WITH THE INSURANCE REQUIRED TO BE MAINTAINED UNDER THIS AGREEMENT OR THE DEDUCTIBLE OR SELF-INSURED RETENTION OR CONTRIBUTION OF A PARTY IN CONNECTION

WITH SUCH INSURANCE COVERAGE. TO THE EXTENT THAT THE ACTUAL SETTLEMENT OF A CLAIM BY THE INSURANCE PROVIDER IS LESS THAN THE DAMAGE INCURRED IN CONNECTION WITH A CLAIM, THEN THE RESPONSIBLE PARTY SHALL REMAIN LIABLE FOR SUCH EXCESS UP TO THE MONETARY CAP SET FORTH HEREIN.

**§ 8.6 Exclusions.** THE LIMITATIONS OF LIABILITY SET FORTH IN **§ 8.4** AND **§ 8.5** SHALL NOT APPLY TO DAMAGES ARISING FROM, RELATED TO OR BASED ON THE FRAUD OF A PARTY.

#### **ARTICLE 9. DISPUTES; GOVERNING LAW; VENUE.**

**§ 9.1 Dispute Resolution Procedure.** Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (or the breach or validity hereof) (each, a “**Dispute**”), shall be resolved in the manner described in this **ARTICLE 9**.

**§ 9.2** Escalation of Disputes.

**§ 9.2.1** All Disputes shall be initially referred to the appropriate manager/supervisory level personnel for resolution. If such personnel are unable to resolve such Dispute within ten (10) days after referral or such longer period as the Parties agree, then either Party may request in writing that the Dispute be escalated.

**§ 9.2.2** Promptly after receipt of written notice of escalation by either Party under **§ 9.2.1**, the Parties shall submit the Dispute to the appropriate senior management of the Parties for resolution. If senior management is unable to resolve the Dispute within five (5) business days from the date such Dispute was submitted for consideration or such longer period as the Parties may agree, then either Party may initiate legal proceeding in a court of competent jurisdiction located in the State of California, consistent with **§ 9.4**.

**§ 9.3 Injunctive Relief.** Each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), and by doing so will not be deemed to have breached its agreement to resolve Disputes under this **ARTICLE 9**.

**§ 9.4 Governing Law; Venue.** This Agreement will be governed by and interpreted in

accordance with the Laws of the State of California, without regard to any conflicts of laws principles. In any action arising from this Agreement, venue shall be in the Superior Court of California in San Diego County, California. The Parties, to the extent they may legally do so, waive any right each may have to assert the doctrine of *forum non conveniens* or to object to venue to the extent any proceeding is brought in accordance with this section.

## **ARTICLE 10. REPRESENTATIONS; WARRANTIES**

**§ 10.1 Mutual.** Each Party represents, warrants and covenants to the other Party that: (a) it is a legal entity, duly organized, validly existing, and in good standing; and (b) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite action, and (iii) will not violate any agreement, lease, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

**§ 10.2 By Customer.** Customer further represents, warrants and covenants to Seller that it is the sole and exclusive owner of the Property and can grant the rights to Seller that are necessary for Seller to carry out its obligations as set forth herein; provided that Seller hereby acknowledges the Tenant MOU, as described in Sections 4.7.4 and 5.2.1.; and (b) Customer will pay all Utility and other bills and charges at the System Meter, except as expressly provided in this Agreement.

**§ 10.3 By Seller.** Seller represents, warrants, and covenants to Customer that Seller will perform the obligations of Seller under this Agreement to procure, install, and operate the System, and to provide the Products, in a workmanlike manner consistent with Prudent Industry Practices, this Agreement, and applicable Law. In addition, for twenty 20 years from and after the COD or, if shorter, for the Term, Seller shall operate and maintain the System in good condition, reasonable wear and tear excepted, subject to Customer's compliance with Customer's obligations under this Agreement and the fulfillment of third-party manufacturer warranties with respect to the System. Subject to the limitations in **ARTICLE 8**, in response to any Claim for breach of Seller's warranty under this Section made during the Term, as Customer's sole remedy, Seller will provide diagnostic, repair, and replacement services to address the warranty issue.

**§ 10.4 Limitations.** THE WARRANTIES OF EACH PARTY UNDER THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED SELLER EXPRESSLY DISCAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE.

## **ARTICLE 11. BUY-OUT RIGHT.**

**§ 11.1 Ownership of System** Throughout the Term (except as otherwise permitted in **ARTICLE 12**), Seller shall be the legal and beneficial owner of the System at all times, including any Tax Benefits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to the Site or the Property. Each of the Seller and Customer agree that the Seller (or the designated assignee of Seller permitted under **ARTICLE 12**) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Notwithstanding the foregoing or anything to the contrary herein, all Environmental Attributes generated by the system, such as renewable energy credits (RECs), will be assigned to the Customer pursuant to Section 2.2.

**§ 11.2 Options to Purchase.**

**§ 11.2.1** At the end of the seventh and twelfth year of the Initial Term and upon the expiration of this Agreement at the end of the Initial Term or any Additional Term (each an “**Option Buyout Date**”), so long as Customer is not in default under this Agreement, Customer may purchase the System (as then existing) from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the amount set forth in the annual System value schedule that is attached hereto as Exhibit “G”, which is the reasonable determination by Customer and Seller of the fair market value of the System as of the buyout option dates. Customer must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the Option Buyout Date, as applicable, and the purchase shall be complete prior to the end of the Option Buyout Date.

**§ 11.2.2** Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide

any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Customer any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.

**§ 11.2.3 Determination of Fair Market Value.** “Fair Market Value” will be determined with respect to the current actual value of the Solar Facility in place. Seller shall determine Fair Market Value within thirty (30) days after Customer has exercised its option to purchase the System. Seller shall give written notice to Customer of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Customer reasonably objects to Seller’s determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System as defined herein. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Customer will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

## **ARTICLE 12. ASSIGNMENT AND FINANCING**

**§ 12.1 Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Customer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate of Seller which, directly or indirectly, 100% owns, is owned by, or is under 100% common ownership with control with Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller’s

obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement, provided assignee commits to assumption of all Seller's obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Customer's rights and obligations under this Agreement. Notwithstanding the above, Customer's consent to assignment, where required, shall not be unreasonably withheld if Customer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Any attempted assignment in violation of the foregoing shall be null and void.

**§ 12.2 Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**Financing Party**” means any person providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms substantive terms of this Agreement, impair the rights of Customer to terminate this Agreement for cause other than to provide a financing party with an additional period to cure, or impose any additional material obligation on the Customer. In connection with an assignment pursuant to **§ 12.1(i) through (iv)**, Customer agrees to execute any a reasonable and customary consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties and reasonably acceptable to legal counsel of Customer.

**§ 12.3 Successor Servicing.** The Parties further acknowledge that in connection with any construction or long-term financing or other credit support provided to Seller or its Affiliates by Financing Parties, that such Financing Parties may require that Seller or its



Affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Customer agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement and such Successor Provider (x) has no less than five (5) years of experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement..

### **ARTICLE 13. MISCELLANEOUS**

**§ 13.1 Entire Agreement.** The Agreement, which incorporates and includes the Cover Page, the Signature Page, these Terms and Conditions, the Schedule, and the Exhibits, constitutes the entire agreement between Seller and Customer with respect to the subject matter hereof, superseding any prior agreement or representation, oral, electronic, or written.

**§ 13.2 Amendment; Modification; Waiver.** This Agreement may not be amended, except in a writing signed by duly authorized representatives of both Parties. No waiver of any breach or provision of this Agreement will be binding unless it is in a writing signed by a duly authorized representative of the waiving Party. The waiver, or failure to enforce, any right resulting from any breach or provision of this Agreement will not be deemed a waiver of any right relating to a subsequent breach, any other provision, or any other right hereunder.

**§ 13.3 Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of the Agreement will continue in full force and effect.

**§ 13.4 Confidentiality.**

**§ 13.4.1** Each Party shall keep confidential and shall not use, make available or disclose any



Confidential Information of the other Party. Notwithstanding the foregoing, Confidential Information may be disclosed on an as needed basis to Affiliates, personnel, subcontractors and/or agents of the receiving Party as required for the purpose of fulfilling the receiving Party's obligations under this Agreement, including as required to provide or receive any Products. Each Party shall ensure that any Confidential Information it discloses in accordance with this Section is treated as confidential by the person or entity to whom it is disclosed provided that such person or entity is bound by confidentiality obligations no less protective of the Confidential Information than those imposed upon under this Agreement.

§ 13.4.2 The provisions of this § 13.4 shall not apply to any Confidential Information which: (i) is or becomes commonly known within the public domain other than by breach of this Agreement or any other agreement that the disclosing Party has with any party; (ii) is obtained from a third party who is lawfully authorized to disclose such information free from any obligation of confidentiality; (iii) is independently developed without reference to any Confidential Information; or (iv) is known to the receiving Party without any obligation of confidentiality prior to its receipt from the disclosing Party.

§ 13.4.3 Nothing in this § 13.4 shall prevent either Party from disclosing Confidential Information where it is required to be disclosed by Law (including without limitation the California Public Records Act, California Government Code section 6250 and following), or judicial, administrative, governmental or regulatory orders. Seller acknowledges that Customer, as a public agency, is legally bound to comply with public disclosure laws and must maintain its discretion and authority to disclose or withhold from disclosure the information which is the subject of a public request for information/records. As such, Seller acknowledges that non-disclosure of identified Confidential Information cannot be guaranteed and that public disclosure may be required pursuant to an order of court or other governmental body, notwithstanding any action by Customer.

If Customer receives a request or demand for public disclosure of Confidential Information pursuant to applicable law, regulation, lawsuit, or other proceeding ("Disclosure Request"), Customer will promptly notify Seller of such Disclosure Request. If Customer, in its sole discretion, concludes the information requested through the Disclosure Request is Confidential Information and exempt from public disclosure, Customer will inform the requesting party of its belief that such information is exempt from public disclosure and will withhold such information from public disclosure in the manner required by applicable law. Notwithstanding the above, Seller may affirmatively state that it does not oppose disclosure of any requested Confidential Information. If Customer withholds such information from disclosure, in its discretion, and the withholding is legally challenged, Seller agrees to indemnify and hold harmless the Customer, its employees, and agents (collectively, "Customer Parties") from any legal

claims or actions.

If Customer, in its sole discretion, believes that the information requested through the Disclosure Request may not be properly withheld from disclosure pursuant to applicable law, Customer will promptly notify Seller of its intent to disclose such information, including any information identified by Seller as Confidential Information, within five (5) business days prior to disclosure so that Seller may seek an appropriate protective order prohibiting disclosure of such information. Seller may also provide additional information, as warranted, regarding the confidentiality of the information proposed for disclosure. Seller acknowledges and understands that Customer, as public agency, must retain its discretion to determine public disclosure of information consistent with applicable law, and that this provision is intended to provide Seller an opportunity to seek appropriate judicial action related to possible disclosure. Therefore, Seller agrees that any action to prevent disclosure of any information proposed for disclosure by Customer, whether resulting in an order or determination that information should be withheld or not, in no way creates any liability in or for Customer to Seller, including with respect to attorney's fees, and Seller agrees to hold harmless Customer Parties. Moreover, if a third-party intervenes or otherwise joins or participates in such action, Seller shall indemnify and hold harmless Customer Parties from any legal claims or actions, including any award of attorney's fees.

#### **§ 13.4.4**

The receiving Party shall immediately inform the disclosing Party in the event that it becomes aware of the possession, use or knowledge of any Confidential Information of the disclosing Party by any person or entity not authorized to possess, use or have knowledge of such Confidential Information and shall, at the request of the disclosing Party, provide such reasonable assistance as is required by the disclosing Party to mitigate any damage caused thereby.

**§ 13.5 Publicity.** Subject to obtaining prior written consent, each Party shall be permitted to refer to the other Party by name with respect to the System or the Products in any marketing literature, web sites, articles, press releases or any other document or communication published in electronic or paper form by or for such Party; and (b) the Party that uses such references for marketing purposes shall provide to the other Party a copy of all marketing materials that include such references or a link to the web site or web page that includes such references. Following such notice or provision of electronic link, if either Party objects to any particular use of its trademarks or names by the other Party, the other Party shall immediately modify or cease the use as reasonably requested by the objecting Party.

§ **13.6 Independent Contractors**. The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture or other relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other Party's behalf.

§ **13.7 Force Majeure**. If either Party is prevented from performing one or more of its non-monetary obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall promptly notify the other Party in writing specifying in reasonable detail the nature of the Force Majeure Event and its expected duration. The affected Party shall use commercially reasonable efforts to avoid or overcome the Force Majeure Event with the least possible delay. The obligations of the affected Party shall be reduced or suspended during the continuance of the Force Majeure Event; provided, that such obligations shall be reduced only to the extent that the adverse effects of the Force Majeure Event cannot be mitigated by the affected Party's diligent efforts. If a Force Majeure Event is anticipated to prevent a Party from performing its obligations under this Agreement for a period of three (3) months or more, the Parties shall meet to determine the appropriate course of action.

§ **13.8 Notices**. Any notices allowed or required under the Agreement must be in writing addressed to each Party's principal place of business as set forth on the Cover Page and will be effective on the date of receipt if the date of receipt is a business day or on the next business day if the receipt date is not a business day.

§ **13.9 Further Assurances**. Each Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to secure all necessary Approvals in a timely manner and to otherwise carry out the terms of this Agreement.

§ **13.10 Prevailing Wage**. The Agreements is subject to the applicable prevailing wage requirements of the California Labor Code and Seller shall comply with such requirements in the installation, maintenance, repair, and removal of the System.

§ **13.11 Counterparts**. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which will be considered one and the same instrument.

*[Remainder of Page Left Intentionally Blank]*

## SCHEDULE 1.1 DEFINITIONS

For purposes of the foregoing Agreement, unless the context requires otherwise, the following capitalized terms have the meanings assigned to them on this **Schedule 1.1**.

1. “**Additional Term**” has the meaning set forth on the Cover Page.
2. “**Affiliate**” means an entity which controls, is controlled by or is under common control with a Party. As used herein, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
3. “**Agreement**” has the meaning set forth on the Cover Page.
4. “**Approvals**” means all approvals, consents, permits, licenses and certificates, including all corresponding inspections and authorizations, required by any utility, grid service provider or Governmental Authority in connection with the installation or operation of the System or the provision of Products hereunder.
5. “**Billing Period**” means a monthly Utility billing period.
6. “**Capacity Attributes**” means any defined characteristic, certificate, tag, credit or accounting construct associated with the amount the capacity of the System that can be purchased or sold pursuant to the SDG&E tariff applicable to the System.
7. “**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable Law, including any regulation or incentive program promulgated or administered by any Governmental Authority and applicable to the System or any Product; (ii) the imposition of any material conditions on the issuance or renewal of any Approval after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Approval at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), (iii) revocation of any Environmental Attribute or Tax Benefit, which establishes requirements or revokes beneficial laws or rules affecting owning, supplying,

constructing, installing, operating, or maintaining the System, or other performance of the Seller's obligations hereunder or which has a material adverse effect on the cost to Seller of performing such obligations.

8. "Claim" has the meaning set forth in § 8.1.

9. "Commercial Operation Date" or "COD" means the earliest date that the System is completely installed, interconnected, permitted, and operational, and has received written permission to operate from the Utility, if required.

10. "Confidential Information" means information disclosed by a Party to the other Party under this Agreement, subject to the exceptions in § 13.4, and may include, but is not limited to, Trade Secrets or physical samples, financial, business, sales or technical information, terms of agreements, negotiations or proposals, and such other information disclosed (a) in written or other tangible form and marked "Confidential" or with words of similar import, (b) orally or visually and identified as Trade Secret, confidential or proprietary information at the time of disclosure, or (c) under circumstances by which the receiving Party should reasonably understand such information is to be treated as confidential, whether or not marked "Confidential" or otherwise. For clarity, "Confidential Information" includes any Trade Secret information relating to the System.

11. "Contract Year" means each consecutive 12-month period commencing on the Commercial Operation Date.

12. "Customer" has the meaning set forth on the Cover Page.

13. "Customer Curtailment" has the meaning set forth in § 3.6.

14. "Defaulting Party" has the meaning set forth in § 6.2.

15. "Delivery Point" is as defined in § 2.2.

16. "Dispute" has the meaning set forth in § 9.1.

17. "Effective Date" has the meaning set forth on the Cover Page.

18. “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever titled, attributable to System, the generation of electrical energy from the System, and its displacement of conventional Energy generation. Environmental Attributes include (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Customer, any Affiliate, or any investor of Customer to any Affiliate; (4) Capacity Attributes; (5) direct third-party (including utility) rebates or subsidies for generation of energy by a renewable energy source; and (6) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits. Environmental Attributes do not include Tax Benefits.

19. “Environmental Laws” means all federal, state and local laws, statutes, ordinances and regulations (including the United States Code of Federal Regulations), now or hereafter in effect, in each case as amended or supplemented from time to time, relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

20. “Event of Default” has the meaning set forth in § 6.2.

21. “Exclusion Event” means:

(a) the Solar Facility is not operating and/or the Solar Electricity cannot be provided, as the result of an act, omission, or Event of Default of the Customer which impairs the performance of the Solar Facility or provision of Solar Electricity to the Delivery Point;

(b) a breach, default, or Event of Default by Customer with respect to Customer's ownership or occupancy of the Property prevents Seller from operating the System or providing the Solar Electricity, including, without limitation, preventing Seller (or any of Seller's subcontractors) from accessing the Site;

(c) a Force Majeure Event occurs that has the effect of preventing or materially inhibiting Seller from operating the System or providing the Solar Electricity, or that results in a reduction in the installed capacity of the Solar Facility;

(d) the sale, foreclosure, or other transfer of ownership of the Site, relocation of the Solar Facility;

(e) A change of law, rule, or regulation is implemented after the Effective Date that adversely affects the ability of Seller to operate the System, deliver Solar Electricity, and, despite the commercially reasonable efforts of the Parties, the adverse impact of such change in law, rule, or regulation cannot be eliminated within a reasonable period (not to exceed 90 days after the Effective Date of such change).

22. "Force Majeure Event" means any act, event or condition beyond a Party's reasonable control, including acts of God, fire, explosion, import delays or restrictions, accident, floods, earthquakes, embargoes, undue delay by any utility, governmental authority, or SGIP administrator, orders of a Governmental Authority, epidemics, war, terrorism, nuclear disasters or other similar events.

23. "Governmental Authority" means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any person, owned, operated, managed or otherwise controlled thereby.

24. "Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Services or this Agreement.



25. “Hazardous Materials” means: (i) those substances included within the definitions of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes,” and “toxic pollutants,” as such terms are defined under the Environmental Laws; (ii) petroleum and petroleum products; (iii) asbestos and materials containing asbestos; (iv) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (v) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation.

26. “Initial Term” has the meaning set forth on the Cover Page.

27. “ISO” means the California Independent System Operator, or its successor in interest.

28. “Law” means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement, the System, the Site, or the transaction contemplated hereby

29. “Losses” means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ and consultants’ fees and the cost of enforcing any right to indemnification hereunder.

30. “Operational Change” has the meaning set forth on **Exhibit D**.

31. “Product” means the Solar Electricity provided, generated, or created through the operation of the System; and, unless the context otherwise requires, “Products” mean the Solar Electricity provided, generated, or created through the operation of the System.

32. “Proprietary Rights” means patents, trademarks, copyrights, Trade Secrets and any other intellectual or proprietary rights in and to the Software.

33. “Prudent Industry Practices” means those reasonable practices, methods and acts, as they may change from time to time, that (a) are commonly used to own, manage, operate and maintain energy storage facilities and associated facilities of the type that are similar to the System, safely, reliably and efficiently and in compliance with applicable Laws and manufacturers’ warranties and recommendations and (b) are consistent with the exercise of the reasonable judgment, skill, diligence, foresight and care

expected of an energy storage facility operator in order to efficiently accomplish the desired result consistent with safety standards and Laws, in each case taking into account the location of the System, including climatic, environmental and general conditions. Prudent Industry Practices are not intended to be limited to the optimum practices or methods to the exclusion of others, but rather those practices or methods generally accepted or approved by a significant portion of the energy storage industry during the relevant time period.

34. “RECSYS” means the Western Renewable Energy Generation Information System (WREGIS) or any successor system for registering and trading renewable energy credits or similar environmental attributes generated or produced by the System.

35. “Relocation” has the meaning set forth in § 11.1.

36. “Replacement Customer” has the meaning set forth in § 11.1.

37. “Reporting Rights” means the right of Seller to report to any Governmental Authority, utility or other party, including under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns Tax Benefits associated with the System.

38. “Revenue Grade Meter” The System’s electricity output during the Term shall be measured by Seller’s meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy

39. “Seller” has the meaning set forth on the Cover Page.

40. “Scope of Work” means the scope of System development and installation work to be performed by Seller hereunder as described in Exhibit A hereto.

41. “Service Warranty” has the meaning set forth in § 3.3.

42. “Software” means all software provided by Seller, or its Affiliates, contractors, or suppliers for operation of the System, including but not limited to metering, communications, energy management system, and any Customer interface with the System.

43. “Solar Electricity” has the meaning set forth in **§ 2.1**.
44. “System” has the meaning set forth on the Cover Page and includes all alterations, modifications, or improvements thereto,
45. “System Attribute” means any Tax Benefits, and Reporting Rights.
46. “System Meter” has the meaning set forth in **§ 2.2**.
47. “System Site” means the location of the System at the Property, as further described in **Exhibit B** hereto.
48. “Tax Benefits” means any and all (i) any investment tax credits attributable to any component of the System, the Solar Electricity, (ii) production tax credits attributable to any component of the System, the Solar Electricity, (iii) accelerated depreciation attributable to any component of the System, the Solar Electricity, (iv) direct third-party (including utility) rebates or subsidies for generation of energy by a renewable energy source which are not tied to Environmental Attributes, (v) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to any component of the System, the Solar Electricity, or the Services, irrespective of whether such Tax Benefits accrue for the benefit of Seller, any Affiliate or any investor of Seller or its Affiliate.
49. “Term” has the meaning set forth on the Cover Page.
50. “Termination Charge” means the “Solar Termination Charge” set forth on **Exhibit E**,
51. “Trade Secret” has the meaning set forth in California Civil Code section 3426.1(d).
52. “Utility” means the local electricity provider or utility serving the System Site. As of the Effective Date, the Utility is San Diego Gas & Electric Company.
53. “Utility Documents” has the meaning set forth in **§ 4.7.3**.

54. “Utility Service” has the meaning set forth in 0.

## **EXHIBIT A**

### **SYSTEM DESCRIPTION AND SCOPE OF WORK**

EDF Renewables Distributed Solutions, Inc. (Seller) shall perform all work necessary (unless otherwise noted) for:

Except as noted in the table below or otherwise in this Scope of Work, Seller shall perform all work necessary for the design, engineering, development, permitting, material and equipment procurement, installation, construction, testing, commissioning, and start-up, and removal (including management as generator of any hazardous material or waste resulting from the Scope of Work) of the System (collectively, the “**Project**”):

Designs of the Facility shall be based on the applicable vendor technical specifications, applicable Laws, Prudent Industry Practices and be provided in set of drawings, specifications, calculations and reports (i.e. - Facility Plans), as per the Agreement.

#### **PV System Description:**

- Approximately 706kWdc of JA Solar Panels mounted on the facility Roof Top
- A minimum of 1,244,000 kWh of Annual Solar Generation
- Chint Power System Solar Inverters CPS SCA50KTL-DO/US-480
- All wire and cabling necessary for a 480V interconnection with the existing onsite switchgear
- Communications cabling as required for the system operation.
- One (1) Busstop or Breaker connection at the interconnection at the 480V switchgear.
- One (1) Utility Disconnect switch for Utility operation and associated unistrut support system.  
24-hour access will need to be provided to Utility for Disconnect operation.
- All infrastructure necessary for the local Utility interconnection on the customer’s side of the Point of Common Coupling with TAMT infrastructure
- Solar commissioning and testing for system operation.
- KYZ Monitoring installation and coordination with the local Utility.
- 3<sup>rd</sup> party locating services as required for underground conduit installation and trenching.

#### **General Inclusions**

- All work will be completed using prevailing wage labor

- All work shall be completed in a workmanlike manner according to standard industry practices and comply with all applicable current Customer, local, state, and federal codes, regulations, and permitting standards.
- Provide Project progress updates, revised schedules, and relevant communication throughout the performance of the Project. Daily logs to be provided, as required by Customer. Project meetings to be scheduled at regular intervals as required by Customer and shall be bi-weekly at a minimum.
- Provide a minimum 24-hour notice for building access to buildings as well as a 14-day notice for all Utility shutdowns. Customer may deem it necessary for site escorts.
- Provide proper removal, disposal, recycling, and associated coordination of all equipment, materials, appurtenances, etc. to be removed, replaced, or decommissioned. Disposal and recycling documentation shall be provided, upon request.
- Repair and/or replace surrounding architectural finishes associated with the Scope of Work damaged and/or demolished by Seller during the performance of the Project.
- Observe and strictly adhere to all Customer and CalOSHA required safety plans, procedures, and requirements.
- Properly secure work areas with temporary fencing, scaffolding, shoring, trench covers, and other required security measures to ensure a safe work place for employees and subcontractors throughout the performance of the Project.
- Provide applicable Material Safety Data Sheets, upon request.
- Structural Engineering and Electrical Engineering Design as necessary including, if applicable, for submission to the City of San Diego.
- Engineers of Record will be licensed in the state of California.
- Customer agrees to provide a Letter of Authority (LOA) for Seller to contact the Utility on the customer's behalf for the purposes of KYZ Monitoring Installation and Facility Interconnection.
- All Permitting documentation necessary for submission and permit issuance from AHJ, City of San Diego.
- Aluminum wire/cable will be used for feeders rated 100A and above. Copper wire/cable will be used for feeders below 100A.
- Conduit shall be PVC schedule 40 below grade, and EMT above grade.
- All Interconnection coordination with the local Utility provider, including identifying all upgrades to Customer's electrical system required for SGIP or by Utility.
- All installation coordination with Customer's project management and Seller subcontractors.

- Interconnection shutdowns if required will be performed outside of normal business hours.
- A person responsible for the site will be present to shut down the power or the Customer will provide a letter indemnifying the Seller for any damages that directly result from the Seller shutting off the power.
- Delivery and Unloading of the equipment at the Project site.
- Temporary fencing to “safe off” the work area as required for the Project construction period.
- Temporary restrooms within the temporary fencing for Seller’s use.
- Permit Fees by AHJ and Utility
- Utility Standard interconnection fee for a simplified Interconnection.
- Final Facility Plans (as-builts) will be provided in PDF format.
- Weekly Coordination meetings will be held lasting approximately 30-minutes with Seller Project Manager, its subcontractors, and Customer Representative. Screenshare and conference call information will be provided by Seller.

Seller’s subcontractor will provide onsite management and report to the Seller’s Project Manager.

- Seller will provide turn-key installation services for a complete, fully commissioned, and operational system(s) per the Facility specifications above.
- Seller will perform system start-up and provide commissioning documentation.
- Seller will coordinate application process of rebates and incentives through Utility Provider(s) and applicable measurement & verification activities.
- Seller will coordinate interconnection application process and all applicable inspections or requisite activities for final interconnection.

### **Exclusions**

- Project designs will be based upon accurate Property documentation provided by Customer.
- Upgrades to Customer’s electrical system required for by Utility will be the responsibility of the Customer.
- Any work, including costs incurred for work, due to changes to the Facility location.
- Any upgrades to the building that are not part of the PV System Project that are required to bring existing conditions in compliance with CBC or NFPA70E.
- Upgrades required for interconnection past the SDG&E Point of Common Coupling. If upgrades are required resulting from the interconnection review, they will be the responsibility of the owner.
- Temporary power during the interconnection shutdown.



## EXHIBIT B SYSTEM SITE

### Property Address and Property Information:

Current Property Owner: San Diego Unified Port District

Address: 802 Terminal Street, San Diego, CA 92101

### System Site:

The proposed “System Site” within the Property highlighted in yellow below



**System Roof Top:**

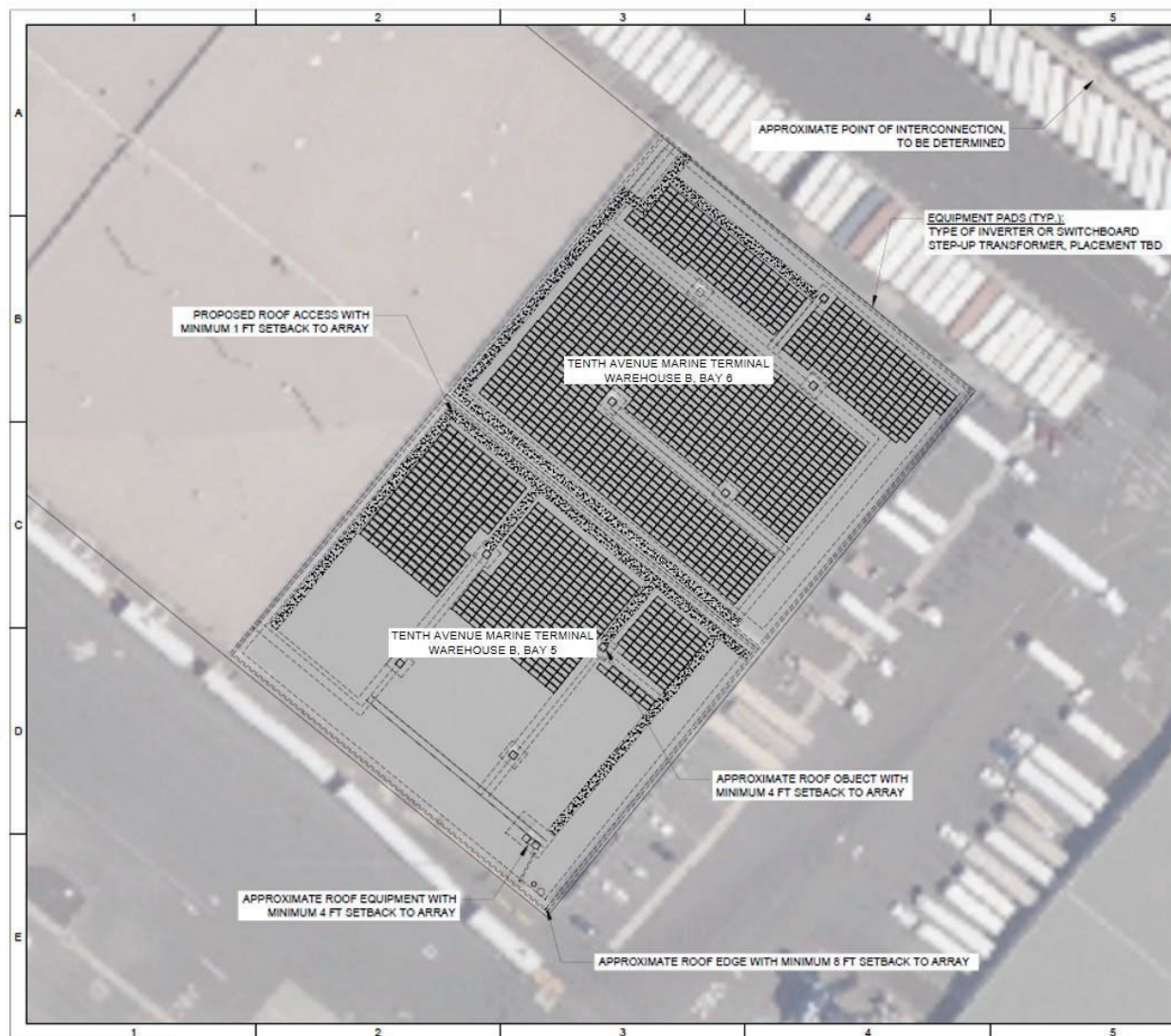
The roof top on the “System Site” where the System will be installed is denoted within the red dashed diagram below.





**System Layout:**

The System Layout on the roof top of the System Site



**EXHIBIT C**  
**COMPENSATION – SOLAR FACILITY**

As consideration for the provision of Products and Seller's other obligations under the Agreement, Seller shall be entitled to and shall be paid the consideration set forth in this **Exhibit C**.

1. **ELECTRICITY PRICE; INVOICING.** For the duration of the Term and any Additional Term, Seller will sell to Customer any and all Solar Electricity produced by the Solar Facility at the rate of **\$0.109 kWh** of Solar Electricity generated by the System measured at the Delivery Point (System Meter). Seller will invoice Customer monthly for Solar Electricity. Each invoice will specify for the applicable month (i) the kWh of Solar Electricity generated and delivered to Customer, (ii) the applicable price per kWh, and (iii) applicable taxes on the generation, sale, delivery or consumption of the Solar Electricity, if any. Taxes due with respect to the generation, sale, delivery or consumption of Products would be for the account of the Customer (or would not apply). All invoices for amounts payable under this Agreement shall be due and payable not later than twenty (20) days after the date of the applicable invoice. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the rate of 12%/annum until paid in full. In the event Customer disputes in good faith any invoiced amounts, Customer shall pay the undisputed portion of such invoice by the due date notwithstanding such Dispute. Following the resolution of any Dispute pursuant to the Agreement, Customer shall make outstanding payments, if any, within fifteen (15) days of such resolution.

2. **INCENTIVES.** Notwithstanding the System's presence on the Property, in consideration of the provision of Products and Seller's other obligations under the Agreement, Seller shall own, and may assign or sell in its sole discretion, all right, title and interest associated with or resulting from the development, installation and ownership of the System including all System Attributes and Tax Benefits, in each case that currently exist or as may become available due to any change in Law, but excluding all Environmental Attributes. At Seller's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Seller's right, title and interest in and to the System Attributes. Customer shall not take any action or suffer any omission at the Property that would have the effect of impairing the value to the Seller of the System Attributes. If any Tax Benefits are paid directly to Customer, Customer shall immediately pay such amounts over to Seller. Seller will take all action necessary to assign the Environmental Attributes and any compensation in connection with same to Customer, provided that following such assignment of the Environmental

Attributes to Customer, any compliance requirements with respect to the Environmental Attributes under any applicable Laws shall be the sole responsibility of Customer. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Customer, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Customer's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Customer's timely publication. Seller and Customer shall file tax returns, as applicable, and other tax-related information and documents consistent with this **Section 2.**

### 3. MONTHLY INVOICING

Seller will provide the Customer with a monthly invoice electronically within 30 days of the end of the time period for the Solar Electricity generated by the System that include, but is not limited to:

- Time period covered by invoice
- Electricity generated by Solar Facility during the time period
- Cumulative Electricity generated by Solar Facility to date
- Solar Facility Electricity Rate
- Estimate of Utility costs avoided
- Contact information of EDF Asset Management Services

4. **TERMINATION CHARGE.**

(a) The “**Termination Charge**” is an amount equal to the monthly prorated Solar Photovoltaic Termination Value as outlined in Termination Values Table

**Termination Values Table**

End of Year	Solar Photovoltaic Termination Values
<b>1</b>	Termination Not Allowed
<b>2</b>	Termination Not Allowed
<b>3</b>	Termination Not Allowed
<b>4</b>	Termination Not Allowed
<b>5</b>	Termination Not Allowed
<b>6</b>	\$995,025
<b>7</b>	\$923,878
<b>8</b>	\$844,353
<b>9</b>	\$760,875
<b>10</b>	\$673,313
<b>11</b>	\$611,975
<b>12</b>	\$557,082
<b>13</b>	\$499,538
<b>14</b>	\$439,253
<b>15</b>	\$375,887
<b>16</b>	\$309,322
<b>17</b>	\$239,348
<b>18</b>	\$165,776
<b>19</b>	\$88,306
<b>20</b>	\$0

5. **PAYMENT OF TERMINATION CHARGE.** Except as provided in subclause (a) or (b) below, as of the Effective Date of termination of this Agreement, Customer shall pay Seller the “**Termination Charge**” calculated as of the termination date; provided, however, that:

(a) No Termination Charge shall be payable if the Agreement is terminated by Customer due to the breach or default by Seller or pursuant to Agreement § 6.3.3.

(b) No Termination Charge shall be payable if the Agreement is terminated by Seller, unless the Seller termination is due to a Customer Event of Default.

(c) The Termination Charge payable pursuant to this Exhibit C shall be in addition to, not in lieu of, any Termination Charge payable pursuant to Exhibit D.



**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

**A. SELLER INSURANCE**

1. No work shall be done under this Agreement unless there is in effect insurance required under this Exhibit; nor shall the Seller allow any subcontractor to commence work until all its insurance has been obtained and approved. At such times during the Term, Seller shall maintain the following insurance coverages, at Seller's cost and expense, and shall, upon Customer's request, furnish to Customer a certificate evidencing such coverage:

- a. The Seller shall maintain or cause to be maintained adequate workers' compensation insurance in accordance with California Labor Code section 3700 to secure the payment of compensation to its employees and employees of any subcontractor under it who may come within the protection of such workers' compensation laws of the State of California, and shall provide or cause to be provided employer's liability insurance for the benefit of its employees and the employees of any subcontractor under it not protected by such compensation laws. By its execution of the Contract, Seller certifies as follows: "I am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I agree to and will comply with such provisions before commencing the performance of the Work on this Contract."
- b. Where the work is on or near navigable water, proof of Longshore & Harbor Workers' Compensation Act (LHWCA formerly USL&H) and Jones Act coverages will apply for any employees covered by the Act(s). Seller can either provide proof of coverage or evidence from the Division of Longshore and Harbor Workers' Compensation Office that this project falls outside of the LHWCA site/status test.
- c. The Seller shall take out and shall furnish satisfactory proof, by certificate or otherwise, as may be required, that it has taken out "OCCURRENCE FORM" Commercial General Liability insurance, including completed operations and Contractual liability coverage, with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 0001, to protect said Seller against loss from liability imposed by law from damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting directly or indirectly from the performance or execution of this Contract or any subcontract thereunder, and also to protect said Seller against

- loss from liability imposed by law for damage to any property, caused directly or indirectly by the performance or execution of this Contract or any subcontract thereunder.
- d. Seller shall take out and furnish satisfactory proof, by certificate that it has taken out Commercial Automobile Liability insurance covering accidents arising out of the use and operation of all owned, owned and hired automobiles and trucks at least as broad as Insurance Services Office Form CA 0001.
  - e. Where the Work includes a new structure or new structures and is not construction on an existing structure subject to loss or damage, the Seller shall maintain or cause to be maintained Builder's Risk insurance on a complete value form sufficient to protect against such loss or damage in full until the Work is accepted by the Customer. Coverage shall be all risk of loss including coverage for theft or vandalism; the Customer shall be included as a named insured; the policy shall stipulate that losses will be adjusted with, and payable to, the Customer; and any deductible will be borne by Seller.
2. All liability and property damage insurance shall be maintained by the Seller in full force and effect during the Contract Time. The amount of coverage of said insurance shall be not less than the following:
- a. Commercial General Liability covering bodily injury and property damage with combined single limits of \$2,000,000.00 per occurrence and \$2,000,000 Project Specific Aggregate. Limits may be accomplished in combination of General Liability and Excess/Umbrella Liability.
  - b. Business Auto Liability covering owned, non-owned and hired autos and trucks bodily injury and property damage with combined single limits of \$2,000,000.00.
  - c. Professional Liability insurance in the amount of one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) aggregate. All coverages under this section shall be effective as of the Effective Date of this Agreement or provide for a retroactive date of placement that coincides with the Effective Date of this Agreement.
  - d. Umbrella or Excess Liability insurance with limits no less than five million dollars (\$5,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.
3. All said commercial general liability insurance policies shall: (1) name, or be endorsed to name, the Customer, its officers, officials and employees as additional insureds and protect the Customer against all liabilities, costs, damages, expenses and provide for the legal defense of claims and attorneys' fees and the cost thereof, and Tenant, San Diego Refrigerated Service Inc., a California corporation ("SDRS") (2) state, or be endorsed to state that Seller's insurance is primary and not excess or contributing to any

insurance issued in the name of the Customer or SDRS, and (3) contain a severability of interest or cross-liability clause. The required Workers' Compensation policy shall be endorsed with a waiver of subrogation clause for the Work under this contract.

4. All said policies of insurance shall have a noncancellation clause providing that thirty (30) days' written notice shall be given to the Customer prior to such cancellation except for notice of cancellation for non-payment of premium which shall have a ten (10) day notice of cancellation. All such notices shall be delivered to the Customer's Construction Administration Department.

5. The procuring of such required policies of insurance shall not be construed to limit Seller's liability hereunder, nor Seller's obligations under the indemnification provisions and requirements of this Contract.

6. Nothing herein contained shall be construed as limiting in any way the extent to which the Seller may be held responsible for the payment of damage to persons or property resulting from its operations or the operations of any subcontractor under it.

7. Certificates evidencing all required insurance and endorsements effecting coverage required by this clause shall be delivered to the Construction Administration Department within 10 days prior to construction and shall be in a form acceptable to the Customer.

**A. Customer Insurance.**

1. At all times during the Term, Customer shall maintain, at its sole cost and expense, (a) property insurance on the Property during the Term, Customer shall maintain property insurance coverage for the Property at full replacement value and covering all hazards (excluding standard exclusions in San Diego County such as earthquake, but including flood); and (b) commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than Five Million Dollars (\$5,000,000) for bodily injury and/or property damage. Policy shall name Seller as additional insured for its activities under this agreement.

**2. Additional Requirements.**

- a. All commercial general liability insurance, property insurance maintained by a Customer as required by this Agreement shall name Seller as an additional insured.
- b. All property and casualty policies required to be maintained by Customer shall be issued by a company with an A.M. Best rating of not less than A:VIII.
- c. Customer shall promptly provide to Seller written notice of any material changes to, or proposed cancellation of, the insurance policies required to be carried by Customer.
- d. As soon as possible after the Effective Date, and thereafter, upon request of the other Seller, Customer shall provide Seller a certificate or other reasonable evidence of the insurance required to be maintained by Customer under this Agreement.

The Customer reserves the right to require copies of the certificates of insurance applicable to the Project as required hereunder.

**EXHIBIT E**  
**GUARANTEED ANNUAL ELECTRICITY**

<b>GUARANTEE YEAR</b>	<b>PERIOD COVERED BY GUARANTEE YEAR</b>	<b>EXPECTED ANNUAL ELECTRICITY (in MWh)</b>	<b>GUANRANTEED ANNUAL ELECTRICITY (in MWh)**</b>
1 <sup>st</sup> Guarantee Year	6 months after Commercial Operation Date (COD) through day immediately prior to 2 <sup>nd</sup> anniversary of COD	1243	1119
2 <sup>nd</sup> Guarantee Year	2 <sup>nd</sup> anniversary of COD through day immediately prior to 3 <sup>rd</sup> anniversary of COD	1237	1113
3 <sup>rd</sup> Guarantee Year	3 <sup>rd</sup> anniversary of COD through day immediately prior to 4 <sup>th</sup> anniversary of COD	1231	1108
4 <sup>th</sup> Guarantee Year	4 <sup>th</sup> anniversary of COD through day immediately prior to 5 <sup>th</sup> anniversary of COD	1224	1102
5 <sup>th</sup> Guarantee Year	5 <sup>th</sup> anniversary of COD through day immediately prior to 6 <sup>th</sup> anniversary of COD	1218	1096
6 <sup>th</sup> Guarantee Year	6 <sup>th</sup> anniversary of COD through day immediately prior to 7 <sup>th</sup> anniversary of COD	1212	1091
7 <sup>th</sup> Guarantee Year	7 <sup>th</sup> anniversary of COD through day immediately prior to 8 <sup>th</sup> anniversary of COD	1206	1086
8 <sup>th</sup> Guarantee Year	8 <sup>th</sup> anniversary of COD through day immediately	1200	1080

	prior to 9 <sup>th</sup> anniversary of COD		
9 <sup>th</sup> Guarantee Year	9 <sup>th</sup> anniversary of COD through day immediately prior to 10 <sup>th</sup> anniversary of COD	1194	1075
**	90% of the total Electric Output expected to be produced by the Solar Facility based on the attached, weather-adjusted PVSyst model, subject to reduction every 12 months in accordance with manufacturer-projected degradation.		

*(In accordance with the provisions of Section 2.5.5 this Exhibit will be adjusted upon final design and updated upon Seller's delivery to Customer of a completed version of this Exhibit upon System commissioning together with a PVSyst Production Model for the Solar Facility.)*

Final PVSyst Report for Solar Facility will be attached at upon System commissioning.

#### Weather Adjustment Calculation.

**SEMMY** as defined in Section 2.4.7 "Weather Adjustment" is the Simulated Energy in a Measured Meteorological Year, simulated by inputting the actual measured irradiance, wind speed, and air temperature as reported on site for the respective Guarantee Year into the system's PVSyst simulation.

**EAE** as defined in Section 2.4.7 "Weather Adjustment" is the Expected Annual Electricity with respect to the Guarantee Year, as listed in the above Table.

The ratio utilized in the Weather Adjustment is **SEMMY/EAE**. In the case that this ratio is less than 1 for a given Guarantee Year, the following calculations will be applied to the Expected Annual Electricity and the Guaranteed Annual Electricity:

**Weather-Adjusted Expected Annual Electricity** <sub>GUARANTEE YEAR X</sub> =  
 $(\text{SEMMY}_{\text{GUARANTEE YEAR X}} / \text{EAE}_{\text{GUARANTEE YEAR X}}) * \text{EAE}_{\text{GUARANTEE YEAR X}}$

**Weather-Adjusted Guaranteed Annual Electricity** <sub>GUARANTEE YEAR X</sub> =  
 $(\text{SEMMY}_{\text{GUARANTEE YEAR X}} / \text{EAE}_{\text{GUARANTEE YEAR X}}) * \text{Guaranteed Annual Electricity}_{\text{GUARANTEE YEAR X}}$



For example, assuming SEMMY for Guarantee Year 1 is 1,150MWh, the following Weather-Adjustment would be applied:

$$\text{SEMMY}_{\text{GUARANTEE YEAR 1}} = 1,150\text{MWh}$$

$$\text{EAE}_{\text{GUARANTEE YEAR 1}} = 1,244\text{MWh}$$

$$\text{Guaranteed Annual Electricity}_{\text{GUARANTEE YEAR 1}} = 1,120\text{MWh}$$

$$(\text{SEMMY}/\text{EAE})_{\text{GUARANTEE YEAR 1}} = 1,150\text{MWh}/1,244\text{MWh}=0.9244$$

$$\text{Weather-Adjusted Expected Annual Electricity}_{\text{GUARANTEE YEAR 1}} = (\text{SEMMY}/\text{EAE})_{\text{GUARANTEE YEAR 1}} *$$

$$\text{EAE}_{\text{GUARANTEE YEAR 1}} = 0.9244*1,244\text{MWh} = 1,149.95\text{MWh}$$

$$\text{Weather-Adjusted Guaranteed Annual Electricity}_{\text{GUARANTEE YEAR 1}} = (\text{SEMMY}/\text{EAE})_{\text{GUARANTEE YEAR 1}} *$$

$$\text{Guaranteed Annual Electricity}_{\text{GUARANTEE YEAR 1}} = 0.9244*1,120\text{MWh} = 1,035.33\text{MWh}$$

**EXHIBIT F**  
**SCHEDULED OPERATIONS AND MAINTENANCE REQUIREMENTS**

1. Throughout the term of the Agreement, the Seller will be responsible for all maintenance, repairs, and parts, both scheduled and non-scheduled. The Seller will be responsible for all maintenance and inspections to identify and fix problems before they occur, including infrared photography for hot spots, manufacturer recommended maintenance, hardware torque checks, and array cleanings. The maintenance requirements also include:

- i. Perform and annual inspections of all modules, verification of proper fan operation on each inverter, and checking/ cleaning the inverters heat sinks as needed; Seller has the option of performing inverter monitoring remotely;
- ii. Annually check the inverter enclosure seals for damage, visually inspect condition of all inverter cables and connections;
- iii. Annually, check module ground connections;
- iv. Every two years perform complete array electrical performance verification; and
- v. Regular maintenance should not result in system downtime of more than seventy-two (72) hours per year.

2. The Solar PV System must have a real-time self-monitoring capability to alert operators and maintenance personnel to potential problems or required maintenance needed within 18 hours. Seller will coordinate with the Customer to coordinate field work and the Seller will inspect the site and perform any necessary repairs within 48 hours.

3. The annually Seller shall submit Operations and Maintenance Reports shall include the following information:

- i. Time period covered by the report;
- ii. Operational status of project components (modules, inverters, transformers);
- iii. Description of any unusual operational events that occurred during the month;
- iv. Description of improvements, expansion, or repair to the system during the month;
- v. List of needed and/or planned improvements, expansions, or repairs;
- vi. Name and contact information for the individual responsible for preparing and submitting the report;

- vii. Copies of any engineering reports or independent evaluations of any projects completed during the month; and
- viii. Interface with insurance company in event of trespassing, vandalism, natural act, or other cause for claim.

Task #	Component/Type	Preventative Maintenance Description	Frequency
1	All	100% visual inspection of all solar generator components including AC collection system and interconnection equipment.	Annually
2	All	Remove and dispose of materials (i.e., trash, bird nests, etc.) that may be found in, on or under the PV array obstructing the array on the rooftop or parking canopies.	Annually
3	Combiner Boxes and Disconnects	Perform 100% Infrared (IR) scans of primary and secondary combiner boxes, inverters, pad mount transformers, AC cable splices, disconnects, and junction boxes on all combiner boxes, re-combiner boxes and inverter connections. Tighten loose connections to design specification torque force in compliance with all manufacturer's guidelines. Record IR images for all combiners, re-combiners, inverters and document any broken terminal blocks and/or unresolved "warm" connections.	Annually
4	Electrical Vault in Fire Lane	Visually inspect all PV, EV, and communications cables for damage. Inspect vault for debris and clean.	Annually
5	Inverters	Conduct inverter preventative maintenance in compliance with all manufactures' operation guidelines, including the cleaning of inverter cabinet air vents, checking heat sinks, checking enclosure seals, visual inspections of cables, and changing of inverter air filters.	Annually
6	Junction Boxes	Open and clean all canopy and underground junction boxes and check for damaged cables	Annually
7	MET	Visual inspection and cleansing as needed of met station equipment including, but not limited to pyranometers, temperature probes, and anemometers, as well as other duties as prescribed by manufacturer or	Annually

Task #	Component/Type	Preventative Maintenance Description	Frequency
		Owner; including, but not limited to inspection of pyranometer desiccants, verification of inclination of pyranometers, and maintenance of an inspection log, including photographs.	
8	MET	Calibration of met station components and sensors (e.g., pyranometers, inclinometers, anemometers) as recommended by manufacturer. Adjust any sensors found to be performing outside manufacturer's specifications. Document unresolved issues for future corrective action.	Annually
9	Meters	Calibrate meter every 2 years- to manufacturer's standards	Annually
10	Modules	Perform Infrared (IR) scans on at least 25% of PV modules, (front sides including junction box and connectors), 100% Infrared (IR) scans in 4 years, to determine any loose connections and hot spots within junction boxes/module connections. Record images of any modules with temperature abnormalities and document module location(s).	Annually
11	PV DC circuits	Complete 100% string level open circuit voltage and current checks and DC operating amperage tests and document all measurements	Annually
12	Rooftop	Visual inspection of rooftop membrane to determine any areas which require repair, etc.	Annually
13	Solar Modules	100% visual inspection of solar module soiling to determine if washing is necessary. Panel washing will be conducted at discretion of seller in order to maintain performance guarantee.	Annually
15	Electrical Grounding	Checking all electrical equipment to verify ground connection.	Annually
16	Switching Equipment	Inspect switching equipment in electrical room and on battery pad as well as transformer, EV switchboard and associated panel boards and meter enclosure. Check for loose fittings, torque on terminated conductors and mounting hardware. Record anything out of tolerance and re-torque as required.	Annually

**UNSCHEDULED MAINTENANCE**

Seller will monitor The Solar Facility Status, and will coordinate Unscheduled Maintenance activities, including but not limited to equipment resets, inverter replacements, panel replacements, with the Customer 48 hours ahead of any visit to the Site.

**CUSTOMER MONITORING**

Seller will provide Customer with access to monitoring that includes, but is not limited to:

- Real time operating status
- Real time alarm status
- Real time Electricity generation
- Historical Electricity generation

**EXHIBIT G**  
**System Value Schedule**

Beginning of Operating Year	Solar Photovoltaic Termination Values
7	\$900,555
12	\$557,531
20	\$88,306

**Exhibit H: Terms of Manufacturer Warranties for Major Materials**

MAJOR MATERIAL	MANUFACTURER WARRANTY TERM
Modules	20 Year Performance Warranty
Roof Racking System	Covered under EDF Work Warranty
Inverters:	15 Years



**EXHIBIT I**  
**SAN DIEGO PORT TENANT MOU**

(4)

San Diego Unified Port District  
Document No. 70031  
Filed JUN 10 2019  
Office of the District Clerk

## MEMORANDUM OF UNDERSTANDING

The San Diego Unified Port District ("District") and San Diego Refrigerated Services, Inc., a California Corporation ("SDRS") collectively, ("Parties") enter into the following Memorandum of Understanding ("MOU") this 21<sup>st</sup> day of March 2019, for the purpose of memorializing certain agreements and the Parties' mutual understanding regarding the potential placement of solar panels on the roof of Warehouse B at the Tenth Avenue Marine Terminal ("TAMT").

WHEREAS, there exists a certain lease between the District and SDRS bearing District Clerk Document Number 64269 ("Lease");

WHEREAS, pursuant to the Lease, SDRS leases approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms and dry storage areas within Warehouse B located at TAMT as more thoroughly described in and defined by the Lease as the "Leased Premises";

WHEREAS, Warehouse B has roof space that is available for the installation of solar photovoltaic panels ("Solar Panels"), provided that the current roof is first replaced with a new roof that is structurally suitable for Solar Panels;

WHEREAS, the Parties are interested in memorializing their agreements and mutual understanding regarding the potential placement of Solar Panels on the roof of Warehouse B on TAMT.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

1. The District may but is not required to install, operate, maintain, own and ultimately remove Solar Panels on the roof of two (2) Bays in Warehouse B, identified as Sections B-5 and B-6 (see Exhibit A) at the District's sole expense (the "District Solar Panels"). For the purposes of clarity, these panels would not be owned by SDRS and the District Solar Panels would not result in a taxable possessory interest for which SDRS would be responsible.

2. To the extent that the District moves forward with the District Solar Panels, at no cost to SDRS the District will provide SDRS with the work plans for installation of the Solar Panels on the roof of Sections B-5 and B-6 when those work plans are complete and will coordinate with SDRS personnel prior to Solar Panel installation to minimize impacts to SDRS operations. SDRS will allow reasonable access to the Leased Premises to District staff, consultants, and contractors to install, operate, and maintain the District Solar Panels. All District staff entering the facility will comply with written safety policies and evacuation procedures provided to District staff by SDRS. The District will provide notice to SDRS prior to entering the Leased Premises in conformance with the Lease. The District retains the right to exclusively use and/or distribute some or all the energy produced by the District Solar Panels and any District-Solar-Panel-associated carbon credits or other environmental attributes as the District determines in the

District's sole and absolute discretion, with potential distribution pursuant to potential future agreements with tenants or other parties.

3. To the extent that the District moves forward with the District Solar Panels, the District will include insurance requirements in its public solicitation for installation of the District Solar Panels and will require that SDRS be named as an additional insured by the contractor(s) selected to complete the installation of the District Solar Panels on Warehouse B. The District will conform with all applicable laws and regulations and contractually require its selected contractor(s) to conform with all applicable laws and regulations, including any potential Storm Water Pollution Prevention Plan ("SWPPP") if required, in moving forward with the District Solar Panels.

4. SDRS may but is not required to install, operate, maintain and ultimately remove Solar Panels on the roof of Warehouse B Sections B-1 and B-2 (see Exhibit A) (the "SDRS Solar Project") during the Lease Term or until the Lease is terminated, whichever comes first, at SDRS' sole expense, subject to SDRS first receiving all requisite administrative and regulatory approvals for such Solar Panels on the roof of Warehouse B, including but not limited to any and all approvals required pursuant to the Lease, such District approvals not to be unreasonably withheld. This paragraph, and this MOU, may not be interpreted to pre-commit the District to the approval of the SDRS Solar Project or any future discretionary action(s).

5. To the extent that the District does not place Solar Panels on the roof of some or all of Sections B-5 and B-6 by June 30, 2023, those unused sections may be utilized by SDRS for any use authorized by the Lease subject to SDRS first receiving all necessary administrative and regulatory approvals, as required by the Lease.

6. This MOU is effective as of March 21, 2019, and shall end at the Lease Termination Date as defined in the Lease or any extensions thereof, unless the Lease or this MOU is terminated prior to the Lease Termination Date. Subject to Paragraph 5 of this MOU, for the purposes of clarity, it is currently the intent of the District that any District Solar Panels will remain on the roof of Warehouse B following the termination of the Lease. Any rights or obligations of SDRS under this MOU shall end at the Lease Termination Date, unless the Lease or this MOU is terminated prior to the Lease Termination Date.

7. This MOU has been mutually drafted by the Parties. The language of this MOU shall be construed according to its plain and ordinary meaning and in accordance with the Lease.

8. The undersigned representatives of the Parties each certify that he/she is fully authorized to enter into this MOU on behalf of the District or SDRS, as applicable.

9. This MOU and the Lease between the Parties shall constitute the entire Agreement between the Parties, and no promises or representations, other than those contained herein and those implied by law, have been made by the Parties. This MOU may be amended only by unanimous written consent of the Parties. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Parties.

10. In the event any provision of this MOU is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this MOU so as not to cause the invalidity or unenforceability of the remainder of this MOU. All remaining provisions of this MOU shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

11. Any ambiguity contained in this MOU, or dispute with respect to this MOU, shall be remedied pursuant to the terms of the Lease.

12. All notices and correspondence under this MOU shall conform to the notice requirements set forth in the Lease.

13. This MOU will be governed and construed in accordance with the laws of the state of California.

14. This MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument. Signatures transmitted electronically shall have the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

Dated: 6/7/19

SAN DIEGO UNIFIED PORT DISTRICT  
By: Randa J. Coniglio  
Randa J. Coniglio  
President and CEO

Dated: March 21, 2019

SAN DIEGO REFRIGERATED  
SERVICES  
By: Frank Plant  
Frank Plant  
Executive Director

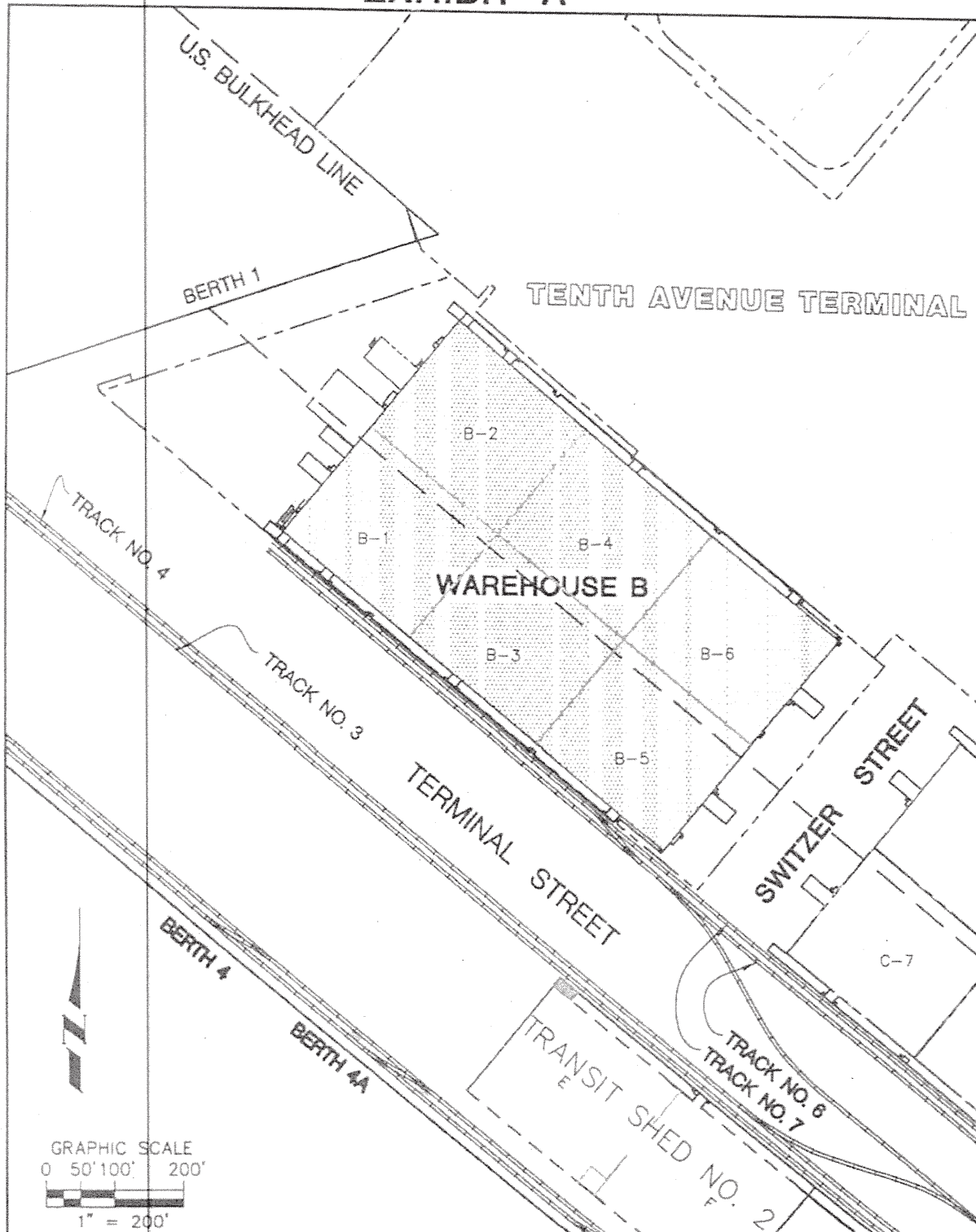
APPROVED AS TO FORM AND LEGALITY:

Dated: 6/5/19

John N. Carter  
John N. Carter, Deputy General Counsel  
Attorney for San Diego Unified Port District

Dated: 3/22/19

Stephen Gentes  
Stephen Gentes  
Attorney for San Diego Refrigerated  
Services

**EXHIBIT "A"**

DRAWN JFD

CHECKED

REVIEWED

**SAN DIEGO UNIFIED PORT DISTRICT**  
**EXHIBIT**  
**WITHIN CORPORATE LIMITS OF SAN DIEGO**  
**WAREHOUSE B**

DATE JANUARY 29, 2020

SCALE AS SHOWN

REF.

DRAWING NO.  
 SHEET 1 OF 1

FILE LOCATION



(2)

Reference Copy  
70031**RESOLUTION 2019-053****RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SAN DIEGO REFRIGERATED SERVICES, INC., REGARDING THE PLACEMENT OF SOLAR PANELS ON THE ROOF OF WAREHOUSE B AT THE TENTH AVENUE MARINE TERMINAL**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1; and

**WHEREAS**, the proposed Memorandum of Understanding (MOU) between the District and San Diego Refrigerated Services, Inc. (SDRS) would facilitate the placement of solar photovoltaic (PV) on the roof of Warehouse B on the Tenth Avenue Marine Terminal (TAMT), as part of the of the California Energy Commission (CEC) grant-funded Resiliency in Terminal Operations Project (Microgrid Project); and

**WHEREAS**, this agreement designates the space for each party to install solar PV on the roof of Warehouse B and is aligned with the CEC microgrid grant funding received and accepted by the Board of Port Commissioners (BPC) on June 12, 2018; and

**WHEREAS**, the placement of solar PV on the Warehouse B roof was analyzed as part of designing the microgrid, which included an analysis of available roof area and proximity and access to the District's electrical infrastructure, Warehouse B also had the largest available roof space on the terminal; and

**WHEREAS**, this agenda item represents an important component of the Microgrid Project facilitating the installation of solar PV on the TAMT and fulfills a portion of the mitigation requirements of the Final Environmental Impact Report for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (TAMT Final EIR), Second Addendum approved by the BPC on April 10, 2018; and

**WHEREAS**, staff recommends that the BPC adopt a resolution authorizing the Executive Director to execute a MOU with SDRS, regarding the placement of solar photovoltaic (PV) on the roof of Warehouse B on the TAMT

2019-053

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District as follows:

The Executive Director or her designated representative is hereby authorized to enter into a Memorandum of Understanding between the District and San Diego Refrigerated Services, Inc. for the placement of solar panels on the roof of Warehouse B at the Tenth Avenue Marine Terminal.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

  
By: ~~Assistant/Deputy~~

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14<sup>th</sup> day of May 2019, by the following vote:


AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

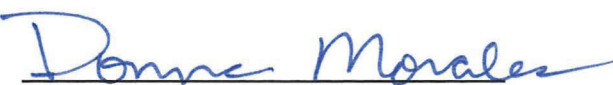
EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

  
Garry J. Bonelli, Chairman  
Board of Port Commissioners

ATTEST:

  
Donna Morales  
District Clerk

(Seal)



Reference Copy

(29)

70031

San Diego Unified Port District

3165 Pacific Hwy.  
San Diego, CA 92101

Item No. 9

---

File #:2019-0137

---

DATE: May 14, 2019

SUBJECT:

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SAN DIEGO REFRIGERATED SERVICES, INC., REGARDING THE PLACEMENT OF SOLAR PANELS ON THE ROOF OF WAREHOUSE B AT THE TENTH AVENUE MARINE TERMINAL****EXECUTIVE SUMMARY:**

Staff recommends that the Board adopt a resolution authorizing the Executive Director to execute a Memorandum of Understanding with San Diego Refrigerated Services, Inc. (SDRS), regarding the placement of solar photovoltaic (PV) on the roof of Warehouse B on the Tenth Avenue Marine Terminal (TAMT). (Attachment A)

The proposed Memorandum of Understanding (MOU) between the San Diego Unified Port District (District) and SDRS would facilitate the placement of solar PV on the roof of Warehouse B on the TAMT, as part of the of the California Energy Commission (CEC) grant-funded Resiliency in Terminal Operations Project (Microgrid Project).

This agreement designates the space for each party to install solar PV on the roof of Warehouse B. This agreement is aligned with the CEC microgrid grant funding received and accepted by the Board on June 12, 2018 (Attachment C, 2018-0185). The placement of solar PV on the Warehouse B roof was analyzed as part of designing the microgrid, which included an analysis of available roof area and proximity and access to the District's electrical infrastructure. Warehouse B also had the largest available roof space on the terminal.

This agenda item represents an important component of the Microgrid Project facilitating the installation of solar PV on the TAMT. In addition, the TAMT Microgrid Project fulfills a portion of the mitigation requirements of the Final Environmental Impact Report for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (TAMT Final EIR), Second Addendum approved by this Board on April 10, 2018 (Attachment B, 2018-0086).

**RECOMMENDATION:**

Adopt a resolution authorizing the Executive Director to Execute a Memorandum of Understanding with San Diego Refrigerated Services, Inc., regarding the placement and installation of solar PV on the roof of Warehouse B on the TAMT.



---

**File #:2019-0137**

---

**FISCAL IMPACT:**

This agenda item has no fiscal impact.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

**DISCUSSION:**

The District and SDRS wish to enter into a Memorandum of Understanding (MOU) for the purpose of memorializing certain agreements and the Parties' mutual understanding regarding the potential placement of solar PV on the roof of Warehouse B at the TAMT.

There exists a certain lease between the District and SDRS, District Clerk Document Number 64269 (Lease). Pursuant to the Lease, SDRS leases approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms and dry storage areas within Warehouse B located at TAMT. Warehouse B has roof space that is available for the installation of solar PV, provided that the current roof is first replaced with a new roof that is structurally suitable for solar PV. The roof replacement is currently underway and is anticipated to be completed in June 2019. The Parties are interested in memorializing their agreements and mutual understanding regarding the potential placement of solar PV on the roof of Warehouse B on TAMT.

On June 12, 2018, the Board approved acceptance of grant funds from the CEC administered Electric Program Investment Charge grant funding opportunity (GFO-17-302) to support the Port of San Diego Microgrid Project at the TAMT (Attachment C, 2018-0185). This grant program awarded the District \$4,985,272 toward the design, installation and testing/evaluation of the microgrid controller, battery energy storage system, and electrical infrastructure improvements. The District identified \$4,629,936 in match funds for a total project value of \$9,615,208. The District's match funds include an in-kind staff contribution from University of California, San Diego in the amount of \$201,963 and the District's expenses associated with the roof retrofit of TAMT Warehouse B, installation of energy efficient lighting, payments made toward a solar PV Power Purchase Agreement during the grant period, and in-kind staff time.

During the design of the microgrid system, District staff worked closely with the engineering firm Burns & McDonnell to identify and analyze potential locations for solar PV to support the microgrid at TAMT. After a thorough analysis of all available locations, the roof of Warehouse B was selected as

**File #:2019-0137**

the optimal location due to technical and financial factors, including available roof area and proximity and access to the District's electrical infrastructure. Warehouse B had the largest available usable roof space on the terminal. Other locations considered, such as Warehouse C, utilize the roof space for the conveyance of cargo products and would not be a suitable match for solar PV at this time. In addition, SDRS has repeatedly expressed interest in pursuing solar projects for their facility, however, placement of solar PV requires a full roof replacement for Warehouse B.

The Board awarded the contract for the roof replacement of TAMT Warehouse B under the District's Fiscal Year 2018/19 Major Maintenance Program (Attachment D, 2018-0559). The District initiated construction in March of 2019 with the completion anticipated in June 2019.

This agenda item represents an important step in meeting the implementation phases of the CEC grant funding agreement, as well as meeting mitigation requirements of the TAMT Final EIR, as documented in the Second Addendum approved by this Board on April 10, 2018 (Attachment B, 2018-0086).

**General Counsel's Comments:**

The Office of the General Counsel reviewed this agenda and approved the proposed MOU as to form and legality.

**Environmental Review:**

The proposed Board action, including without limitation, a resolution authorizing an MOU for the placement of solar panels on the roof of Warehouse B at TAMT was adequately covered in the Final Environmental Impact Report (FEIR) for the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Project (SCH #2015-031046, Clerk Document No. 65901), prepared and adopted/certified by the District on December 13, 2016 (Resolution No. 2016-199), Addendum No. 1 to the FEIR for the Demolition and Initial Rail Component Project (Clerk Document No. 67004), adopted/certified by the District on July 11, 2017 (Resolution No. 2017-0100), and Addendum No. 2 to the FEIR for the Implementation and Installation of a Renewable Microgrid Project (Clerk Document No. 65901), adopted certified by the District on April 10, 2018 (Resolution No. 2018-061). The proposed project is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the District finds and recommends that the approval of the MOU for the placement of solar panels on the roof of Warehouse B does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Because none of these

**File #:2019-0137**

factors have been triggered and the adoption of the MOU for the placement of solar panels on the roof of Warehouse B does, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162 (b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

In addition, the proposed Board action complies with sections 21, 35, and 87 of the Port Act, which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its powers, and for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action was covered in the Coastal Development Permit (CDP) (CDP 2016-09) for the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Project, issued on December 13, 2016 (Resolution No. 2016-201); amendment no. 1 to the CDP for the Demolition and Initial Rail Component Project, issued on July 11, 2017 (Resolution No. 2017-101); and amendment no. 2 to the CDP for the Implementation and Installation of a Renewable Microgrid Project, issued on April 10, 2018 (Resolution No. 2018-062). The proposed Board action is consistent with the projects analyzed in the CDP and subsequent amendments. No additional action under the California Coastal Act is required at this time.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Josefina V. Khalidy  
Principal, Maritime Business Retention, Maritime

**Attachment(s):**

Attachment A:	Memorandum of Understanding - San Diego Refrigerated Services
Attachment B:	Agenda Sheet, 2018-0086
Attachment C:	Agenda Sheet, 2018-0185
Attachment D:	Agenda Sheet, 2018-0559

## MEMORANDUM OF UNDERSTANDING

The San Diego Unified Port District ("District") and San Diego Refrigerated Services, Inc., a California Corporation ("SDRS") collectively, ("Parties") enter into the following Memorandum of Understanding ("MOU") this 21<sup>st</sup> day of March 2019, for the purpose of memorializing certain agreements and the Parties' mutual understanding regarding the potential placement of solar panels on the roof of Warehouse B at the Tenth Avenue Marine Terminal ("TAMT").

WHEREAS, there exists a certain lease between the District and SDRS bearing District Clerk Document Number 64269 ("Lease");

WHEREAS, pursuant to the Lease, SDRS leases approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms and dry storage areas within Warehouse B located at TAMT as more thoroughly described in and defined by the Lease as the "Leased Premises";

WHEREAS, Warehouse B has roof space that is available for the installation of solar photovoltaic panels ("Solar Panels"), provided that the current roof is first replaced with a new roof that is structurally suitable for Solar Panels;

WHEREAS, the Parties are interested in memorializing their agreements and mutual understanding regarding the potential placement of Solar Panels on the roof of Warehouse B on TAMT.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

1. The District may but is not required to install, operate, maintain, own and ultimately remove Solar Panels on the roof of two (2) Bays in Warehouse B, identified as Sections B-5 and B-6 (see Exhibit A) at the District's sole expense (the "District Solar Panels"). For the purposes of clarity, these panels would not be owned by SDRS and the District Solar Panels would not result in a taxable possessory interest for which SDRS would be responsible.

2. To the extent that the District moves forward with the District Solar Panels, at no cost to SDRS the District will provide SDRS with the work plans for installation of the Solar Panels on the roof of Sections B-5 and B-6 when those work plans are complete and will coordinate with SDRS personnel prior to Solar Panel installation to minimize impacts to SDRS operations. SDRS will allow reasonable access to the Leased Premises to District staff, consultants, and contractors to install, operate, and maintain the District Solar Panels. All District staff entering the facility will comply with written safety policies and evacuation procedures provided to District staff by SDRS. The District will provide notice to SDRS prior to entering the Leased Premises in conformance with the Lease. The District retains the right to exclusively use and/or distribute some or all the energy produced by the District Solar Panels and any District-Solar-Panel-associated carbon credits or other environmental attributes as the District determines in the



District's sole and absolute discretion, with potential distribution pursuant to potential future agreements with tenants or other parties.

3. To the extent that the District moves forward with the District Solar Panels, the District will include insurance requirements in its public solicitation for installation of the District Solar Panels and will require that SDRS be named as an additional insured by the contractor(s) selected to complete the installation of the District Solar Panels on Warehouse B. The District will conform with all applicable laws and regulations and contractually require its selected contractor(s) to conform with all applicable laws and regulations, including any potential Storm Water Pollution Prevention Plan ("SWPPP") if required, in moving forward with the District Solar Panels.

4. SDRS may but is not required to install, operate, maintain and ultimately remove Solar Panels on the roof of Warehouse B Sections B-1 and B-2 (see Exhibit A) (the "SDRS Solar Project") during the Lease Term or until the Lease is terminated, whichever comes first, at SDRS' sole expense, subject to SDRS first receiving all requisite administrative and regulatory approvals for such Solar Panels on the roof of Warehouse B, including but not limited to any and all approvals required pursuant to the Lease, such District approvals not to be unreasonably withheld. This paragraph, and this MOU, may not be interpreted to pre-commit the District to the approval of the SDRS Solar Project or any future discretionary action(s).

5. To the extent that the District does not place Solar Panels on the roof of some or all of Sections B-5 and B-6 by June 30, 2023, those unused sections may be utilized by SDRS for any use authorized by the Lease subject to SDRS first receiving all necessary administrative and regulatory approvals, as required by the Lease.

6. This MOU is effective as of March 21, 2019, and shall end at the Lease Termination Date as defined in the Lease or any extensions thereof, unless the Lease or this MOU is terminated prior to the Lease Termination Date. Subject to Paragraph 5 of this MOU, for the purposes of clarity, it is currently the intent of the District that any District Solar Panels will remain on the roof of Warehouse B following the termination of the Lease. Any rights or obligations of SDRS under this MOU shall end at the Lease Termination Date, unless the Lease or this MOU is terminated prior to the Lease Termination Date.

7. This MOU has been mutually drafted by the Parties. The language of this MOU shall be construed according to its plain and ordinary meaning and in accordance with the Lease.

8. The undersigned representatives of the Parties each certify that he/she is fully authorized to enter into this MOU on behalf of the District or SDRS, as applicable.

9. This MOU and the Lease between the Parties shall constitute the entire Agreement between the Parties, and no promises or representations, other than those contained herein and those implied by law, have been made by the Parties. This MOU may be amended only by unanimous written consent of the Parties. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Parties.

10. In the event any provision of this MOU is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this MOU so as not to cause the invalidity or unenforceability of the remainder of this MOU. All remaining provisions of this MOU shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

11. Any ambiguity contained in this MOU, or dispute with respect to this MOU, shall be remedied pursuant to the terms of the Lease.

12. All notices and correspondence under this MOU shall conform to the notice requirements set forth in the Lease.

13. This MOU will be governed and construed in accordance with the laws of the state of California.

14. This MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument. Signatures transmitted electronically shall have the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

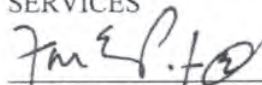
Dated: \_\_\_\_\_

SAN DIEGO UNIFIED PORT DISTRICT

By: \_\_\_\_\_  
Randa J. Coniglio  
President and CEO

Dated: March 21, 2019

SAN DIEGO REFRIGERATED  
SERVICES


By:   
Frank Plant  
Executive Director

APPROVED AS TO FORM AND LEGALITY:

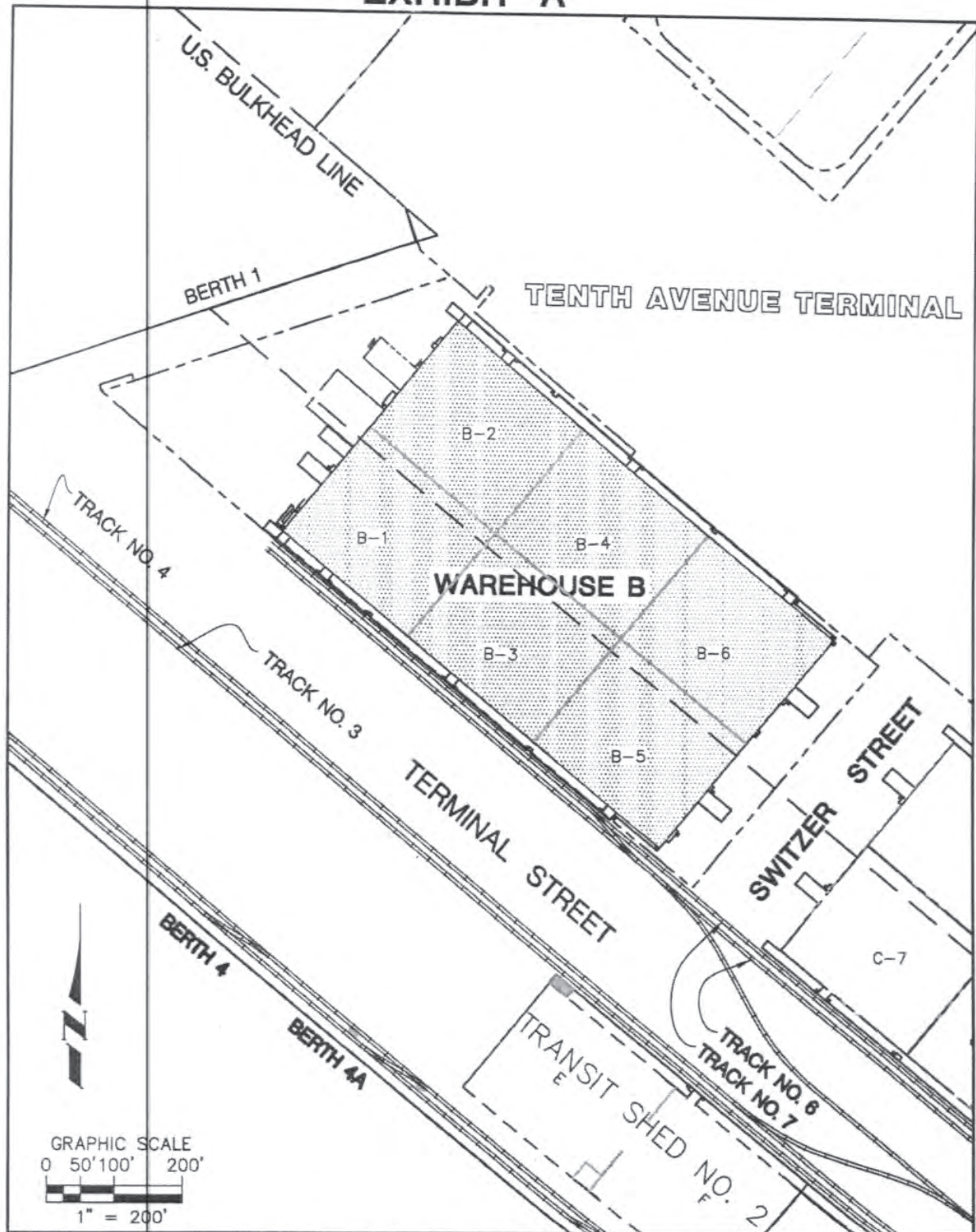
Dated: \_\_\_\_\_

\_\_\_\_\_  
John N. Carter, Deputy General Counsel  
Attorney for San Diego Unified Port District

Dated: 3/22/19

  
Stephen Gentes  
Attorney for San Diego Refrigerated  
Services



**EXHIBIT "A"**

DRAWN JFD

CHECKED

REVIEWED

**SAN DIEGO UNIFIED PORT DISTRICT**  
**EXHIBIT**  
**WITHIN CORPORATE LIMITS OF SAN DIEGO**  
**WAREHOUSE B**

DATE JANUARY 29, 2020

SCALE AS SHOWN

REF.

DRAWING NO.  
 SHEET 1 OF 1

FILE LOCATION

**DATE:** April 10, 2018

**SUBJECT:**

**..Title**

**IMPLEMENTATION AND INSTALLATION OF A RENEWABLE MICROGRID AT THE TENTH AVENUE MARINE TERMINAL:**

- A) RESOLUTION APPROVING THE SECOND ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE “TENTH AVENUE MARINE TERMINAL REDEVELOPMENT PLAN AND DEMOLITION AND INITIAL RAIL COMPONENT PROJECT,” IN ACCORDANCE WITH MITIGATION MEASURE – GREENHOUSE GAS NO. 6;**
- B) RESOLUTION APPROVING INSTALLATION OF A RENEWABLE MICROGRID AT THE TENTH AVENUE MARINE TERMINAL, CONTINGENT ON GRANT FUNDING**

**..Body**

**EXECUTIVE SUMMARY:**

In August 2017 the California Energy Commission (CEC) released a grant funding opportunity (GFO), GFO-17-302, titled “Demonstrate Business Case for Advanced Microgrids in Support of California’s Energy and Greenhouse Gas Policies.” The purpose of this grant is to fund the demonstration and deployment of advanced energy and microgrid technologies that move toward replicable deployment. District staff submitted an application in November 2017 for a Renewable Microgrid at the Tenth Avenue Marine Terminal (TAMT). The Renewable Microgrid includes the installation and subsequent use of solar photovoltaic (PV) on the roof of Warehouse B or Warehouse C, an energy battery storage system, energy efficiency improvements, and electrical infrastructure upgrades.

A Notice of Proposed Awards (NOPA) was released by the CEC on February 20, 2018, that identified the District’s project as receiving an award in the amount of \$4,985,272. The estimated total project cost of \$9,615,208 includes a combined in-kind match from the District and University of California, San Diego (UCSD) in the amount of \$4,629,936.

The Renewable Microgrid implements a mitigation requirement identified in the TAMT Final Environmental Impact Report (EIR) and it facilitates Climate Action Plan progress through the use of increased renewable energy and energy efficiency, thereby reducing greenhouse gas (GHG) emissions. Additional project benefits include cost savings through demand response and peak shaving of District energy loads resulting in reduced electric utility expenses, and increased energy security and resiliency at the TAMT by providing back-up power to District operated facilities, including security infrastructure, site lighting and the existing jet fuel pump.

The TAMT Final EIR requires renewable energy projects to be incorporated within the TAMT or within/areas adjacent to the District’s jurisdiction, or the purchase of GHG offsets from California Air Resources Board (CARB) approved registry or a locally approved equivalent program to achieve an annual reduction, pursuant to Mitigation



Measure GHG-6. The installation of a Renewable Microgrid at TAMT is estimated to result in a reduction of 361 MTCO<sub>2</sub>e annually, which would fulfill approximately 2% of the TAMT's Redevelopment Plan's Final EIR requirement for the 2035 buildout year.

The TAMT Final EIR thoroughly analyzed the potential environmental effects of the TAMT Redevelopment Plan and includes extensive mitigation measures to avoid or reduce the potentially significant impacts on the environment. Although implementing a renewable energy project at TAMT was contemplated at the time the Final EIR was certified, the specific design details of the proposed Renewable Microgrid were not known. Now that the construction and operational details are known, the District has confirmed that the Renewable Microgrid does not involve new or more severe significant effects. As such, the District has prepared the Second Addendum to the TAMT Final EIR in accordance with the California Environmental Quality Act (CEQA) and its implementing guidelines (CEQA Guidelines).

An addendum to the TAMT Final EIR is a necessary first step to Renewable Microgrid project implementation and staff's continued negotiation with the CEC on the grant terms and conditions, which will be brought back to the Board at a future date.

The CEC requested that the Renewable Microgrid's CEQA documentation be completed prior to finalizing the grant agreement. Once the grant agreement is finalized, staff will return to the Board at a future date to request authorization for grant acceptance and project funding.

### **RECOMMENDATION:**

#### **..Recommendation**

Implementation and installation of a Renewable Microgrid at TAMT:

- A) Adopt a resolution approving the Second Addendum to the Final Environmental Impact Report for the "Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Project," in accordance with Mitigation Measure – Greenhouse Gas No. 6;
- B) Adopt a resolution approving installation of a Renewable Microgrid at the Tenth Avenue Marine Terminal, contingent on grant funding.

#### **..Body**

### **FISCAL IMPACT:**

The Board's adoption of the Second Addendum to the TAMT Final EIR (Item A) and its approval of the Renewable Microgrid at TAMT (Item B) are necessary to secure the \$4.98 million grant from the California Energy Commission (CEC). This grant will require a \$4.62 million match for an estimated total project cost of \$9.61 million.

The CEC requested that the Renewable Microgrid's CEQA documentation be completed prior to finalizing the grant agreement. Once the grant agreement is finalized, staff will return to the Board at a future date to request authorization for grant acceptance and project funding.

## **COMPASS STRATEGIC GOALS:**

The Renewable Microgrid would support modernization of the TAMT by implementing Mitigation Measure GHG-6, thereby increasing the terminal's efficiency, environmental benefits, and energy resiliency. This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

### **Background of Renewable Energy Requirements for the Tenth Avenue Marine Terminal**

The Renewable Microgrid satisfies a portion of a mitigation measure identified in the Final EIR for the TAMT Redevelopment Plan, which was approved by the Board on December 13, 2016. In December 2016, the Board took action to certify the TAMT Final EIR, adopt the TAMT Redevelopment Plan as amended by staff to reflect the Sustainable Terminal Capacity Alternative, and authorize issuance of a non-appealable Coastal Development Permit for the initial Demolition and Initial Rail Component Project.

The Renewable Microgrid would enable the District to begin achieving the GHG reductions identified at buildout of the TAMT Redevelopment Plan for year 2035. Referred to as "Mitigation Measure GHG-6" in the TAMT Final EIR's MMRP (Attachment A), this measure requires the implementation of renewable energy projects or the purchase of GHG offsets from a CARB approved registry or a locally approved equivalent program to achieve an annual reduction of 18,206 MTCO<sub>2e</sub> at full buildout of the TAMT Redevelopment Plan in 2035. The installation of a Renewable Microgrid at TAMT is estimated to result in a reduction of 361 MTCO<sub>2e</sub> annually, which would fulfill approximately 2% of the TAMT's Redevelopment Plan's Final EIR requirement for the 2035 buildout year<sup>11</sup>. The Renewable Microgrid includes the installation and subsequent use of solar PV on the roof of Warehouse B or Warehouse C, an energy battery storage system, energy efficiency improvements, and electrical infrastructure upgrades.

---

<sup>1</sup> Greenhouse Gas Emission (or CO<sub>2e</sub>) reductions are calculated by estimating the number of kilowatt hours that would be reduced, based on the overall composition of the electrical grid that was identified in the Final EIR's baseline analysis. Therefore, the 361 MTCO<sub>2e</sub> reduction assumed in this analysis is based on the SDG&E electrical grid composition that was in place during the Final EIR's baseline, which averaged the 2013 renewable portfolio standard of 24% with the 2014 renewable portfolio standard of 32.2%. This yields an estimate of approximately 28.1% renewable resources, with a conversion rate of 699.5 pounds per megawatt hour. The Renewable Microgrid reductions are attributed to the use of 100% renewable energy and battery storage which provide a net annual energy reduction of approximately 858,000 kWh (272.23 MT CO<sub>2e</sub>) and reduction in energy consumption through lighting energy efficiency measures of approximately 280,000 kWh (88.84 tons of CO<sub>2e</sub>).

### Funding to Implement the Renewable Microgrid at the Tenth Avenue Marine Terminal

In August 2017 the CEC released GFO-17-302, titled “Demonstrate Business Case for Advanced Microgrids in Support of California’s Energy and GHG Policies.” The CEC funding opportunity is through the Electric Program Investment Charge. District staff submitted an application in November 2017 for a Renewable Microgrid at TAMT under the Group 1: Demonstration of Standardized High-DER Penetration, Renewable-Based, Resilient and Commercially Viable Microgrids Located at California Military Bases, Ports, and Native American Tribes within IOU Service Territories.

The Renewable Microgrid project benefits the District through reduced GHG emissions to facilitate Climate Action Plan progress, as well as TAMT Mitigation Measure GHG-6, cost savings through demand response and peak shaving of District energy loads resulting in reduced electric utility expenses, and increased energy security and resiliency at the TAMT by providing back-up power to District operated facilities, including security infrastructure, site lighting and the existing jet fuel pump.

A NOPA was released by the CEC on February 20, 2018, that identified the District’s project as receiving an award in the amount of \$4,985,272. Combined with an in-kind match from the District and UCSD in the amount of \$4,629,936, the estimated project cost is \$9,615,208. Staff is negotiating with the CEC on grant terms and conditions to be brought to the Board at a future date.

The Second Addendum to the TAMT Final EIR is the necessary first step to project implementation (Attachment B). The Environmental Review section includes more information on the Second Addendum to the TAMT Final EIR. Additional details of the subsequent steps/processes are included in the Next Steps section below.

### The Tenth Avenue Marine Terminal Renewable Microgrid Description

The Final EIR thoroughly analyzed the potential environmental effects of the TAMT Redevelopment Plan and recommended extensive mitigation measures to avoid or reduce the Project’s potential significant impacts on the environment. The mitigation measures adopted by the Board when it certified the Final EIR, including Mitigation Measure GHG-6, are set forth in the MMRP. Based on preliminary estimates, Warehouse B has the capacity to support approximately 3.1 megawatts of solar PV. Based on available roof areas, Warehouse C has the capacity to support approximately 1 megawatt of solar PV. At this time the District is proposing to implement the Renewable Microgrid described below as partial implementation of Mitigation Measure GHG-6: “Implement a renewable energy project or purchase the equivalent GHG offsets from a California Air Resources Board Approved Registry or a Locally Approved Equivalent Program for Future Operations Associated with the TAMT Plan.”

The following components are part of the Renewable Microgrid that will be installed and implemented at the TAMT:

- 1) Retrofit the roof at TAMT Warehouse B estimated at approximately 291,000 SF or Warehouse C estimated at approximately 388,000 SF;
- 2) Retrofit existing high mast lighting (approximately 29 light poles) within the eastern areas of the terminal to energy efficient site lighting, for an estimated savings of 280,000 kilowatt hours per year;
- 3) Install a 700 kilowatt (kW) solar PV system on Warehouse B or Warehouse C that would be approximately between 30,000 and 60,000 SF in size;
- 4) Install a 700 kW / 2,500 kilowatt hour (kWh) ground-mounted battery system, consisting of one 40-foot and one 20-foot shipping containers (approximately 600 SF in area / 8 feet in height), a new 2,500 kilo-volt-ampere (KVA) pad-mounted transformer (approximately 50 SF / 3 feet in height), and four new sections of 480 volt (V) switchgear (approximately 150 SF / 5 feet in height);
- 5) Perform minor trenching and repaving (approximately 4 feet in depth and up to 300 feet in length depending upon final siting of associated equipment) to install a new duct bank that connects to the District's existing distribution system; and
- 6) Install various electrical upgrades, such as solar inverters and switches into existing manholes.

### Next Steps

Should this Second Addendum be approved by the Board, staff anticipates the following next steps:

- Staff will provide the CEC with the approved Second Addendum to the TAMT Final EIR, which addresses the Renewable Microgrid's design details noted above;
- Staff and the CEC will complete negotiations on the grant terms and conditions;
- The Final Agreement Package will be brought to the CEC May 9, 2018 Business Meeting for approval; and
- Staff will bring the Final Agreement Package to the June 12, 2018 Board meeting.

### Conclusion and Recommendations

Staff recommends the Board approve the Second Addendum to the Final EIR for the TAMT Redevelopment Plan and Demolition and Initial Rail Component and approve installation of a Renewable Microgrid at the Tenth Avenue Marine Terminal. The Renewable Microgrid implements a mitigation measure identified in the TAMT Final EIR's MMRP and would not result in new or more severe impacts, nor would it result in any new mitigation measures. Furthermore, no changes have occurred with respect to circumstances surrounding the Renewable Microgrid and no new information that was not previously known would require additional environmental review.

### **General Counsel's Comments:**

The Office of the General Counsel reviewed this agenda as to form and legality.

### **Environmental Review:**

In accordance with the CEQA statutes and guidelines, the Renewable Microgrid implements Mitigation Measure GHG-6, which was analyzed in the Final EIR for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (SCH No. 2015-031046), incorporated herein by reference. The “Final Environmental Impact Report for the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Project,” dated December 2016, is on file in the Office of the District Clerk bearing Clerk Document No. 65901 and is available for review at the Port of San Diego, Office of the District Clerk, 3380 N. Harbor Drive, San Diego, CA 92101 or on the Port’s websites below:

**Tenth Avenue Marine Terminal (TAMT) Redevelopment Plan and Demolition and Initial Rail Component Final Environmental Impact Report**

- Part1:<<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning/8008-tamt-redevelopment-plan-and-demolition-and-initial-rail-component-final-eir-part-1-executive-summaryerrata-and-revisions-comments-and-responses-and-mmprp/file.html>>
- Part2:<<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning/8009-tamt-redevelopment-plan-and-demolition-and-initial-rail-component-final-eir-part-2-mmprp-and-reviseddraft-eir/file.html>>
- Part3:<<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning/8010-tamt-redevelopment-plan-and-demolition-and-initial-rail-component-final-eir-part-3-revised-technicalappendices-a-through-i/file.html>>
- Part4:<<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning/8011-tamt-redevelopment-plan-and-demolition-and-initial-rail-component-final-eir-part-4-revised-technicalappendices-j-through-k-attachment-4-and-attachment-5/file.html>>

On December 13, 2016, the Board adopted Resolution No. 2016-199 certifying the Final EIR, adopting Findings of Fact and Statement of Overriding Considerations, and adopting the Mitigation Monitoring and Reporting Program. The Final EIR included a programmatic analysis of the TAMT Redevelopment Plan’s Sustainable Terminal Capacity Alternative, as well as a project-level analysis of the Demolition and Initial Rail Component Project. The programmatic analysis of the TAMT Redevelopment Plan’s Sustainable Terminal Capacity Alternative identifies “Mitigation Measure GHG-6”, which requires the implementation of renewable energy projects or the purchase of greenhouse gas (GHG) offsets from a California Air Resources Board approved registry or a locally approved equivalent program which will achieve full an annual reduction of 18,206 MTCO<sub>2e</sub> by full buildout of the TAMT Redevelopment Plan in 2035. Mitigation Measure GHG-6 was adopted and is included in the Mitigation Monitoring and Reporting Program adopted by the Board. The Renewable Microgrid implements a renewable energy project as identified in the mitigation measure and helps to satisfy a portion of the GHG reduction target required for plan buildout by year 2035.

An Addendum to the Final EIR has been prepared because the specific design of the Renewable Microgrid was not known at the time the Final EIR was certified. However, since that time, the Renewable microgrid has been designed to include: (1) Retrofitting



the roof at TAMT Warehouse B (approximately 291,000 SF in size) or Warehouse C (approximately 388,000 SF in size); (2) Retrofitting existing high mast lighting (approximately 29 light poles) within the eastern areas of the terminal to energy efficient site lighting, for an estimated savings of 280,000 kilowatt hours per year; (3) Installation of a 700 kilowatt (kW) solar PV system on Warehouse B or Warehouse C that would be approximately between 30,000 and 60,000 SF in size; (4) Installation of 700 kW hour (kWh) ground-mounted battery system, consisting of one 40-foot and one 20-foot shipping container (approximately 600 SF in area / 8 feet in height), a new 2,500 kilovolt-ampere (KVA) pad-mounted transformer (approximately 50 SF / 3 feet in height), and four new sections of 480 volt (V) switchgear (approximately 150 SF / 5 feet in height); and (6) Installation of various electrical upgrades, such as solar inverters and switches into existing manholes.

Pursuant to CEQA Guidelines Section 15168(c), subsequent activities in a program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared. If the District finds that pursuant to CEQA Guidelines Section 15162, no new effects could occur or no new mitigation measures would be required, the District can approve the activity as being within the scope of the project covered by the Final EIR and no new environmental document is required.

CEQA Guidelines Section 15162(a) states: When an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Discussion: As discussed in Section 3 of the Addendum, no substantial changes are proposed to the Project which would result in new significant effects or an increase in the severity of previously identified significant effects. As such, major revisions to the previous EIR are not required to reflect the proposed Project change.

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified significant effects.

Discussion: Although design and construction details associated with implementing Mitigation Measure GHG-6 and installing a Renewable Microgrid now available were not available when the Final EIR was certified, as identified in Section 3 of the Addendum, this change in circumstance does not involve any new significant effects or a substantial increase in the severity of previously identified significant effects.

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete shows any of the following:

- A) The project will have one or more significant effects not discussed in the previous EIR; or

Discussion: While the design of a Renewable Microgrid has occurred since certification of the Final EIR, as discussed in Section 3 of the Addendum, no new significant effects would be associated with the proposed design.

- B) Significant effects previously examined will be substantially more severe than shown in the previous EIR; or

Discussion: While design of the Renewable Microgrid has occurred since certification of the Final EIR, as discussed in Section 3 of the Addendum, no significant impacts would be substantially more severe than previously analyzed and disclosed in the Final EIR.

- C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

Discussion: While design of the Renewable Microgrid has occurred since certification of the Final EIR, as discussed in Section 3 of the Addendum, no mitigation measures or alternatives previously found not to be feasible would in fact be feasible.

- D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Discussion: As discussed in Section 1 and Section 3 of the Addendum, the Renewable Microgrid implements Mitigation Measure GHG-6 in accordance with the Final EIR. Therefore, the mitigation measures identified in the Final EIR would be the same and no new mitigation measures or alternatives have been identified that would substantially reduce one or more significant effects on the environment.

Based on these determinations, which are supported by substantial evidence in the administrative record, Staff has reviewed the updated Project and has determined:

- (1) The Renewable Microgrid is identified as a mitigation measure for in the Final EIR, and is therefore within the scope of the Final EIR;
- (2) There will not be any new or more severe significant impacts or required mitigation measures not previously identified in the Final EIR and MMRP previously adopted by the Board;
- (3) None of the conditions described in State CEQA Guidelines Section 15162 which would require the preparation of a subsequent EIR have occurred; and
- (4) Only minor technical changes or additions to the Final EIR are necessary.

As such, pursuant to CEQA Guidelines Section 15164, the analysis for the Project has been appropriately addressed in an Addendum to the Final EIR. If the Board approves the Addendum to the Final EIR, staff will file a Notice of Determination pursuant to CEQA Guidelines Section 15094.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for (1) the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks,

piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered “excluded development” pursuant to Sections 8.a. (Existing Facilities), 8.b (Replacement or Reconstruction) and/or 8.c (New Construction or Conversion of Small Structures) of the District’s Coastal Development Permit (CDP) Regulations because it involves minor alterations involving negligible expansion of the existing use and will have substantially the same purpose and capacity as the existing facilities; therefore, issuance of a CDP is not required.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

Renée Yarmy  
Program Manager, Planning and Green Port

Larry Hofreiter  
Program Manager, Planning and Green Port

### **Attachment(s):**

- Attachment A: Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Final EIR Mitigation Monitoring and Reporting Program (MMRP)
- Attachment B: Second Addendum to Final Environmental Impact Report, Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component – Implementation and Installation of A Renewable Microgrid at the Tenth Avenue Marine Terminal
- Attachment C: Draft Resolution for Second Addendum to Final EIR
- Attachment D: Draft Resolution

<sup>1</sup> Greenhouse Gas Emission (or CO<sub>2</sub>e) reductions are calculated by estimating the number of kilowatt hours that would be reduced, based on the overall composition of the electrical grid that was identified in the Final EIR’s baseline analysis. Therefore, the 361 MTCO<sub>2</sub>e reduction assumed in this analysis is based on the SDG&E electrical grid composition that was in place during the Final EIR’s baseline, which averaged the 2013 renewable portfolio standard of 24% with the 2014 renewable portfolio standard of 32.2%. This yields an estimate of approximately 28.1% renewable resources, with a conversion rate of 699.5 pounds per megawatt hour. The Renewable Microgrid reductions are attributed to the use of 100% renewable energy and battery storage which provide a net annual energy reduction of approximately 858,000 kWh (272.23 MT CO<sub>2</sub>e) and reduction in energy consumption through lighting energy efficiency measures of approximately 280,000 kWh (88.84 tons of CO<sub>2</sub>e).



**DATE:** June 12, 2018

**SUBJECT:**

**..Title**

**ACTIONS RELATED TO THE RESILIENCY IN TERMINAL OPERATIONS PROJECT AT TENTH AVENUE MARINE TERMINAL**

- A) RESOLUTION AUTHORIZING ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF \$4,985,272 FROM THE CALIFORNIA ENERGY COMMISSION (CEC) TO PARTIALLY FUND THE PORT OF SAN DIEGO – RESILIENCY IN TERMINAL OPERATIONS PROJECT LOCATED AT TENTH AVENUE MARINE TERMINAL (TAMT) TO DEMONSTRATE BUSINESS CASE FOR ADVANCED MICROGRIDS IN SUPPORT OF CALIFORNIA’S ENERGY AND GREENHOUSE GAS POLICIES PROGRAM; AUTHORIZING STAFF TO ENTER INTO A GRANT AGREEMENT WITH CEC WHICH INCLUDES INDEMNITY PROVISIONS; AND ALLOCATING MATCH IN THE AMOUNT OF \$4,427,973. DISTRICT MATCH FUNDS INCLUDE PLANNED MAJOR MAINTENANCE, EQUIPMENT OUTLAY AND STAFF COSTS. FUNDS REQUIRED FOR FUTURE YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH ANNUAL BUDGET.
- B) RESOLUTION APPROVING AN AMENDMENT TO THE FY 2019-2023 FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM (CIP) TO ADD THE MICROGRID INFRASTRUCTURE AT TAMT PROJECT AND INCREASE THE CIP APPROPRIATION BY \$5,400,000, WITH \$4,505,275 TO BE REIMBURSED BY THE CEC, AND THE REMAINING \$894,725 TO BE FUNDED FROM THE DISTRICT’S OPERATIONAL EXPENSES AS CAPITAL LABOR.

**..Body**

**EXECUTIVE SUMMARY:**

This agenda item represents the third step in finalizing the California Energy Commission’s (CEC) Microgrid grant-funded Resiliency in Terminal Operations Project at the Tenth Avenue Marine Terminal (TAMT).

The District was notified on February 20, 2018, that its application to the CEC was recommended for funding in the amount of \$4,985,272, to partially fund the installation of a microgrid at TAMT with a total anticipated cost of \$9,615,208. Since that time, the Board has adopted the Second Addendum to the TAMT Final EIR in accordance with the California Environmental Quality Act (CEQA), and directed staff to increase the FY 2019 Capital Improvement Program (CIP) by \$4.85M, of which \$4.5M is for the CIP project Microgrid Infrastructure at TAMT, and \$350,000 is for associated capital labor. This final action will authorize acceptance the CEC grant funding; authorize staff to enter into an agreement with the CEC which includes indemnity provisions; and allocate match funds.

This agenda item will add the Microgrid Infrastructure components to the FY 2019-2023 CIP with a total project budget of \$5,400,000. The budget will have two components, \$4,505,275 from the CEC grant for external costs and \$894,725 from the District's operational expenses for capital labor. The capital labor funds will be budgeted annually based on planned fiscal year expenditures. The FY 2019 planned capital labor expenditures of \$350,000 were included in the annual budget.

### **RECOMMENDATION:**

#### **..Recommendation**

Adopt a Resolution accepting grant funds in the amount of \$4,985,272 from the CEC; authorize staff to enter into a grant agreement with the CEC which includes indemnity provisions; and allocating match funds in the amount of \$4,427,973.

Adopt a resolution approving an amendment to the FY 2019-2023 five-year CIP to add the Microgrid Infrastructure at TAMT project and increase the CIP appropriation by \$5,400,000, with \$4,505,275 to be reimbursed by the CEC, and the remaining \$894,725 to be funded from the District's operational expenses as capital labor.

#### **..Body**

### **FISCAL IMPACT:**

The District's budget team presented the preliminary budget to the Board on May 8, 2018 and requested direction from the Board to include changes to the FY 2019 budget in anticipation of final award. The Board directed staff to increase the FY 2019 CIP by \$4.85M, of which \$4.5M is for the CIP project Microgrid Infrastructure at TAMT, and \$350,000 is for associated capital labor. There is no additional fiscal impact.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goals:

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### **Background**

In November 2017, the District submitted an application for the California Energy Commission's (CEC) grant-funded Business Case Demonstration for Advanced Microgrids program. The program aims to advance California's energy and greenhouse gas (GHG) policies in four key areas:

- Electrification: Improve air quality and reduce GHG emissions.
- Resiliency: Demonstrate a reliable, resilient and safe system.

- **Technological Advancement:** Provide technological advancement and breakthroughs to achieve the state's statutory energy goals.
- **Replicability:** Develop a model that can be utilized in other locations.

The District's project will develop a new, permanent, renewable microgrid at the Tenth Avenue Marine Terminal (TAMT). The project will incorporate renewable energy generation with solar photovoltaic (PV) panels, battery energy storage, efficiency improvements, and a centralized microgrid controller. Together, this technology will allow portions of the terminal to remain operational when disconnected from the electrical grid for a period of time.

A minimum match of 20% of the total project cost was required. The District's application requested that the CEC fund through reimbursement \$4,985,272 of a total project cost of \$9,615,208. The District's proposal included a match of \$4,629,936 - 48% of the total project cost, and is comprised of budgeted expenses, staff time, and a contribution from project partner University of California San Diego (UCSD). The District's portion of the match funding will come from expenses related to a warehouse roof replacement, staff labor, energy efficiency retrofits, equipment costs, and a power purchase agreement for solar PV energy over the duration of the grant agreement. The elements of the District's match are expenses that were identified as planned in current and future budgets, and therefore no additional cash outlay would be required.

The power purchase agreement for solar PV energy combined with battery storage and energy efficiency improvements will reduce energy expenses that the District incurs as an operational expense and is expected to save approximately 60% annually over current utility expenses. Additional project benefits include additional cost savings through demand response and peak shaving of District energy loads resulting in reduced electric utility expenses, and increased energy security and resiliency. The microgrid will also provide back-up power to District operated facilities, including security infrastructure, site lighting, administrative facilities, and the existing jet fuel storage system.

The CEC issued an initial Notice of Proposed Award (NOPA) for this solicitation on January 19, and a subsequent NOPA on February 20. The District's project was included in the funding allowance in the CEC's second NOPA. Since the award announcement, District staff has been working closely with the CEC to finalize project's scope of work and the grant terms and conditions. The Final Grant Agreement reflects these efforts, included as Attachments A and C.

### **Recent Board Action**

The Board recently undertook two actions that advanced this project prior to acceptance of the grant agreement: approval of the second addendum to the Final Environmental Impact Report (EIR) for the TAMT Redevelopment Plan and Initial Rail Component Project, and authorization of changes to the preliminary budget in the final budget to be adopted on June 12, 2018, that reflects the addition of \$4.85M to the CIP.

The Renewable Microgrid implements a mitigation requirement identified in the TAMT Final EIR. The TAMT Final EIR requires renewable energy projects to be incorporated

within the TAMT or within areas adjacent to the District's jurisdiction, or the purchase of GHG offsets from California Air Resources Board (CARB) approved registry or a locally approved equivalent program to achieve an annual reduction, pursuant to Mitigation Measure GHG-6. The installation of a Renewable Microgrid at TAMT is estimated to result in a reduction of 361 MTCO<sub>2e</sub> annually, which would fulfill approximately 2% of the TAMT's Redevelopment Plan's Final EIR requirement for the 2035 buildout year. Although implementing a renewable energy project at TAMT was contemplated at the time the Final EIR was certified, the specific design details of the proposed Renewable Microgrid were not known. Now that the construction and operational details are known, the District has confirmed that the Renewable Microgrid does not involve new or significant effects.

The CEC requested that the Renewable Microgrid's CEQA documentation be completed prior to finalizing the grant agreement. The Board adopted the Second Addendum to the TAMT Final EIR in accordance with the CEQA and its implementing guidelines (CEQA Guidelines) in April. The resolution adopting the Second Addendum to the TAMT Final EIR is attached as Attachment E.

The District's budget team presented the preliminary budget to the Board on May 8, 2018, one day prior to when the CEC Commissioners made the award final at their Business Meeting on May 9, 2018. Staff acknowledged the award as a part of the District's preliminary budget staff report at the May 8 Board of Port Commissioner's meeting, and requested direction from the Board to include changes to the FY 2019 budget in anticipation of final award. The Board directed staff to increase the CIP by \$4.85M, of which \$4.5M is for the CIP project Microgrid Infrastructure at TAMT, and \$350,000 is for associated capital labor.

### **California Energy Commission Action**

The CEC Commissioners adopted the CEC staff's funding recommendation at the Commission's May 9, 2018 business meeting. Formalizing the CEC staff recommendation with an award was a necessary precursor to the Board of Port Commissioners accepting the grant funding and authorizing District staff to enter in to the grant agreement.

### **Next Steps**

As set forth above, this agenda item represents the third step in finalizing the CEC Microgrid grant, and begins implementation of the Resiliency in Terminal Operations Project at TAMT.

District staff has been working closely with CEC staff to finalize the project scope of work and the terms and conditions of the proposed grant agreement. The agreement cover page, standard terms and conditions, and scope of work are attached (Attachments A, B and C). The Resolution (Attachment B) authorizes the acceptance of grant funds in the amount of \$4,985,272 from the CEC, allocates match funds in the amount of \$4,427,973, and authorizes staff to enter into a grant agreement with the

CEC which includes indemnity provisions. A one-page estimated project budget allocation is attached for reference (Attachment D).

The portion of the CEC Microgrid grant to construct the battery storage system will be new infrastructure for the District and will therefore be considered a CIP project. The Board may consider this out-of-cycle request as an opportunity to receive grant funds pursuant to BPC Policy No. 120.

This agenda item would add the Microgrid Infrastructure at TAMT to the FY 2019-2023 CIP with a total project budget of \$5,400,000. The budget will have two components, \$4,505,275 from the CEC grant for external costs and \$894,725 from the District's operational expenses for capital labor. The capital labor funds will be budgeted annually based on planned fiscal year expenditures. The FY 2019 planned capital labor expenditures of \$350,000 were included in the annual budget. This will increase the overall CIP budget \$5,400,000.

Should the Board adopt the proposed resolutions, staff will add the project to the CIP and proceed with a joint District/ CEC project kick-off meeting scheduled for late June.

#### **General Counsel's Comments:**

The Office of the General Counsel reviewed this agenda and approved the proposed grant agreement as to form and legality.

#### **Environmental Review:**

The proposed Board action would authorize staff to enter into an agreement with the CEC to accept \$4,985,272 million of grant funds for the demonstration of business case for advanced microgrids in support of California's Energy and GHG policies program. The microgrid was adequately covered in the Second Addendum to the FEIR (SCH No. 2015-031046; ODC Document No. 68288) and resolution approving installation of a renewable microgrid at TAMT, contingent on grant funding, that was prepared and certified by the District on April 10, 2018 by the Board adopting Resolution Nos. 2018-061 and 2018-062, respectively. The FEIR for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (SCH No. 2015-031046), incorporated herein by reference, prepared and certified by the District on December 13, 2016 by the Board adopting Resolution No. 2016-199.

The proposed project is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the EIR, the District finds and recommends that the approval of accepting the CEC grant funds does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified



significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Because none of these factors have been triggered and the adoption of accepting the CEC grant funds, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

In addition, the proposed Board action complies with Section 87(a)(1) of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered “excluded development” pursuant to Sections 8.a. (Existing Facilities), 8.b (Replacement or Reconstruction) and/or 8.c (New Construction or Conversion of Small Structures) of the District’s Coastal Development Permit (CDP) Regulations because it involves minor alterations involving negligible expansion of the existing use and will have substantially the same purpose and capacity as the existing facilities; therefore, issuance of a CDP is not required.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

Aimee Heim  
Manager, Policy and Grants, Government & Civic Relations

### **Attachment(s):**

Attachment A:	CEC Grant Agreement Cover Page
Attachment B:	EPIC Standard Terms and Conditions
Attachment C:	CEC Microgrid Scope of Work
Attachment D:	Microgrid Budget Overview
Attachment E:	Resolution 2018-061, TAMT EIR Addendum

**DATE:** February 12, 2019

**SUBJECT:**

**..Title**

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2018-10 TO CHAMBERS INC. IN THE AMOUNT OF \$1,598,963 FOR THE ROOF REPLACEMENT AT TAMT WAREHOUSE B PROJECT AS AUTHORIZED BY THE BOARD IN THE FY2018/19 MAJOR MAINTENANCE BUDGET**

**..Body**

**EXECUTIVE SUMMARY:**

This action will adopt the plans and specifications and authorize the award of a major maintenance construction contract to replace the existing roof system at warehouse B of the Tenth Avenue Marine Terminal (TAMT).

The plans and specifications define the contract work including removal of the existing multiple ply build-up roof system and installation of a new lighter and durable single ply Thermoplastic Polyolefin (TPO) membrane roof system for the future solar system installation as part of the Microgrid project grant.

The contract documents were advertised on December 10, 2018. On January 23, 2019, 12 bids were received. The responsive bids are listed in Attachment A. The lowest bid submitted by Chambers Inc. in the amount of \$1,598,963 is considered responsive and responsible. Staff recommends that the Board award the Contract to this bidder.

**RECOMMENDATION:**

**..Recommendation**

Adopt a resolution approving plans and specifications and awarding Contract No. 2018-10 to Chambers Inc. for the construction of the major maintenance project, Roof Replacement at TAMT Warehouse B in the amount of \$1,598,963.

**..Body**

**FISCAL IMPACT:**

Approval of this agenda item will authorize the construction contract expenditure of \$1,598,963. This multi-year project was approved in the FY 2019 Major Maintenance-Capital Program. Staff anticipates expenditures of \$750,000 for the current fiscal year. Additional funds will be requested in FY19/20 Major Maintenance Program-Capital budget to continue the project. If the expenditures are not budgeted in FY 19/20, the contract would have to be terminated by the District.

**COMPASS STRATEGIC GOALS:**

Award of this construction contract will implement the Major Maintenance Program, approved by the Board to be in alignment with the District's vision, mission and Strategic Goals:

- A thriving and modern maritime seaport.

### **DISCUSSION:**

The goal of this project is to replace the existing asphalt roof of Warehouse B relocated inside the Tenth Avenue Marine Terminal (TAMT). The building serves as a storage facility for dry and food products delivered from San Diego County. The building is used for holding perishable goods. All areas of building are refrigerated, however, Areas 5 and 6, the southern portion of the building, are not currently being used by the operator. The existing roof system consists of a built-up, multiple ply over a gypsum concrete substrate, supported by structural tees spanning between metal trusses. Areas 1 to 4 and Areas 5 and 6 were re-roofed in 1992 and 1996 respectively. In order to install the future solar system for energy savings as part of the Microgrid grant, the existing roof system needs to be replaced with a lighter and durable single ply TPO membrane roof system. The new TPO roof system will have a manufacturer's 20-year no dollar limit (NDL) roofing system guarantee.

The work includes removal and disposal of existing 287,475 square feet roof and roof accessories (gutters, downspouts, flashing, etc.) associated with the existing roofing system, repair of existing gypsum roof deck, installation of 302,975 square feet TPO membrane roofing (includes material wrapped around roof appurtenances for waterproofing), removal and replacement of gutters, downspouts and guy-wire system, and other incidental items of work. The construction work will be coordinated with marine operations to minimize disruption to the tenant's activities.

### **Bid Process:**

Construction bid documents, including plans and specifications for Contract No. 2018-10 (Drawing No. TA-2018-02, Project No. MC-0056-01) were advertised on December 10, 2018. Twelve bids were received on the bid opening date – January 23, 2019. The bid amounts received are shown in the table below.

Company	Total Bid	Location
Chambers Inc., DBA Roof Construction	\$1,598,963.00	Escondido, CA
Good-Men Roofing & Construction, Inc.	\$1,701,204.16	San Diego, CA
Sylvester Roofing Company, Inc.	\$1,915,625.00	Escondido, CA
Anning Johnson Company	\$1,922,485.00	City of Industry, CA
R&R Roofing & Waterproofing, Inc.	\$1,923,502.39	Menifee, CA
Commercial & Industrial Roofing	\$2,292,848.50	Spring Valley, CA
A Good Roofer, Inc.	\$2,310,322.50	Lakeside, CA
Brazos Urethane, Inc.	\$2,362,634.25	Madera, CA
Eberhard Benton Roofing	\$2,498,999.50	San Diego, CA
Commercial Waterproofing Systems DBA ERC Roofing	\$2,561,642.75	Santa Ana, CA
Exbon Development, Inc.	\$4,041,169.50	Garden Grove, CA
Best Contracting Services, Inc.	\$534,407,485,000.00	Gardena, CA



*\* The bid received from Best Contracting Services, Inc. contained entry errors which resulted in an error in their total bid.*

The lowest responsive and responsible bid was received from Chambers Inc. in the total bid amount of \$1,598,963. The engineers' construction cost estimate was \$2,685,700.

Upon Board authorization, construction is expected to commence in late March 2019 and will be completed by December 2019.

Staff recommends that the Board approves the plans and specifications and awards Contract No. 2018-10, Roof Replacement at TAMT Warehouse B, San Diego, California to Chambers Inc. in the amount of \$1,598,963.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed the issues set forth in this agenda and found no legal concerns as presented, and has reviewed and approved the District's standard construction contract.

### **Environmental Review:**

The proposed Board direction or action, including without limitation, a resolution approving plans and specifications and awarding a contract for the roof replacement at TAMT warehouse B is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) and Sections 3.a. (1) and 3.b. (2) of the District's *Guidelines for Compliance with CEQA* because the project in question would involve no expansion of use beyond that previously existing and would have substantially the same purpose and capacity as the structure being replaced. A CEQA Exemption was previously issued for this project on March 13, 2018. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). Pursuant to Section 15378(c) of the State CEQA Guidelines, the term "project" refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies and does not mean each separate governmental approval. No further action under CEQA is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered "excluded development" pursuant to Sections 8.a. (12) (Existing Facilities) and 8.b. of the District's Coastal Development

Permit Regulations because the project in question would involve no expansion of use beyond that previously existing and would have substantially the same purpose and capacity as the structure being replaced. A "Coastal Act Categorical Determination of Exclusion" was previously issued for this project on March 13, 2018; therefore, issuance of a Coastal Development Permit or subsequent Exclusion is not required for the proposed Board action.

**Equal Opportunity Program:**

Due to limited known sub opportunities, no SBE goal was established for this opportunity.

**PREPARED BY:**

Joan Siao  
Capital Project Manager I, Engineering-Construction

Attachment:

Attachment A:      Tabulation of Bids

**Agenda File No. 2019-0137****DRAFT****RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SAN DIEGO REFRIGERATED SERVICES, INC., REGARDING THE PLACEMENT OF SOLAR PANELS ON THE ROOF OF WAREHOUSE B AT THE TENTH AVENUE MARINE TERMINAL**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1; and

**WHEREAS**, the proposed Memorandum of Understanding (MOU) between the District and San Diego Refrigerated Services, Inc. (SDRS) would facilitate the placement of solar photovoltaic (PV) on the roof of Warehouse B on the Tenth Avenue Marine Terminal (TAMT), as part of the of the California Energy Commission (CEC) grant-funded Resiliency in Terminal Operations Project (Microgrid Project); and

**WHEREAS**, this agreement designates the space for each party to install solar PV on the roof of Warehouse B and is aligned with the CEC microgrid grant funding received and accepted by the Board of Port Commissioners (BPC) on June 12, 2018; and

**WHEREAS**, the placement of solar PV on the Warehouse B roof was analyzed as part of designing the microgrid, which included an analysis of available roof area and proximity and access to the District's electrical infrastructure, Warehouse B also had the largest available roof space on the terminal; and

**WHEREAS**, this agenda item represents an important component of the Microgrid Project facilitating the installation of solar PV on the TAMT and fulfills a portion of the mitigation requirements of the Final Environmental Impact Report for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (TAMT Final EIR), Second Addendum approved by the BPC on April 10, 2018; and

**WHEREAS**, staff recommends that the BPC adopt a resolution authorizing the Executive Director to execute a MOU with SDRS, regarding the placement of solar photovoltaic (PV) on the roof of Warehouse B on the TAMT

**Agenda File No. 2019-0137**

Page 2 of 2

20xx-xxx

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District as follows:

The Executive Director or her designated representative is hereby authorized to enter into a Memorandum of Understanding between the District and San Diego Refrigerated Services, Inc. for the placement of solar panels on the roof of Warehouse B at the Tenth Avenue Marine Terminal.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

---

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14<sup>th</sup> day of May 2019, by the following vote: