

**RESCUE UNION SCHOOL DISTRICT**

**AGENDA ITEM:** Adoption of Board Meeting Calendar and Board Protocol

**RECOMMENDATION:**

The Superintendent recommends the Board of Trustees approve the 2024 Board Meeting Calendar draft specifying the date, time and place of Board Meetings.

**BACKGROUND:**

Pursuant to Education Code 35140, the Board shall adopt a yearly calendar specifying the date, time and place of each regular meeting.

**STATUS:**

The Board will approve the tentative 2024 Board Meeting Calendar with the date, time and place of each regular meeting and study session.

**FISCAL IMPACT:**

N/A

**BOARD GOAL:**

N/A



# RESCUE UNION SCHOOL DISTRICT

"Educating for the Future, Together"

	Holiday
	Board Meeting
	Board Study Session
	Special Board Meeting

## 2024 Board Meeting Calendar - DRAFT

Regular Meeting: 5:30 p.m. Closed Session; 6:30 p.m. Open Session / Study Session 5:30 p.m.

JAN					FEB					MAR					APR					MAY				
M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F
1	2	3	4	5				1	2					1	1	2	3	4	5			1	2	3
8	9	10	11	12	5	6	7	8	9	4	5	6	7	8	8	9	10	11	12	6	7	8	9	10
15	16	17	18	19	12	13	14	15	16	11	12	13	14	15	15	16	17	18	19	13	14	15	16	17
22	23	24	25	26	19	20	21	22	23	18	19	20	21	22	22	23	24	25	26	20	21	22	23	24
29	30	31			26	27	28	29		25	26	27	28	29	29	30				27	28	29	30	31

### Dec 15 - Board Items Due

1 New Year's Day (observed)  
5 Winter Break Ends  
15 Martin Luther King Jr. Day

### Feb 2 - Board Items Due

19 Presidents' Day (observed)  
20 President's Day  
(Washington's Day)

### Mar 1 - Board Items Due

Mar 25-Apr 1 Spring Break

### Mar 22 - Board Items Due

1 Last Day of Spring Break

### Apr 26 - Board Items Due

24 Last Day of School  
27 Memorial Day (observed)

JUN					JULY					AUG					SEPT					OCT				
M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F
3	4	5	6	7	1	2	3	4	5				1	2	2	3	4	5	6		1	2	3	4
10	11	12	13	14	8	9	10	11	12	5	6	7	8	9	9	10	11	12	13	7	8	9	10	11
17	18	19	20	21	15	16	17	18	19	12	13	14	15	16	16	17	18	19	20	14	15	16	17	18
24	25	26	27	28	22	23	24	25	26	19	20	21	22	23	23	24	25	26	27	21	22	23	24	25
					29	30	31			26	27	28	29	30	30					28	29	30	31	

May 31 - Board Items Due  
Jun 14 - Board Items Due

Board Meeting Date  
TBA, as Needed  
4 Independence Day

Aug 2 - Board Items Due

Aug 30 - Board Items Due  
2 Labor Day

Sept 27 - Board Items Due

NOV					DEC				
M	T	W	T	F	M	T	W	T	F
				1	2	3	4	5	6
4	5	6	7	8	9	10	11	12	13
11	12	13	14	15	16	17	18	19	20
18	19	20	21	22	23	24	25	26	27
25	26	27	28	29	30	31			

Nov 1 - Board Items Due  
11 Veterans Day (observed)  
25-29 Thanksgiving Break

Nov 22 - Board Items Due  
TENTATIVE:  
Dec 23-Jan 3 Winter Break

**RESCUE UNION SCHOOL DISTRICT**

**AGENDA ITEM: ENGLISH LEARNER (EL) MASTER PLAN**

**RECOMMENDATION:**

The Superintendent recommends the Board receive a report from Jennifer Lawson, Multi-Tiered Systems of Support and Special Programs Coordinator, and approve the English Learner Master Plan.

**BACKGROUND:**

The California English Learner Roadmap (ELR) adopted in 2017 is intended to support Local Education Agencies (LEA's) in implementing "California's twenty-first century college and career-ready standards, curriculum, instructional programs, and assessments for English learners." Following the principles described in The California English Learner Roadmap (ELR), districts are responsible for creating a cohesive plan to support the growth and success for our emerging multilingual students. RUSD modeled our English Learner Master Plan after EDCOE's to ensure district and county alignment within our systems of inclusion, instruction, and assessments.

**STATUS:**

With a new Multi-Tiered Systems of Support and Special Programs Coordinator, the District determined it was a good time to revisit our RUSD English Learner (EL) Master Plan which was last updated in 2018. RUSD's revised and updated English Learner Master Plan being presented tonight was developed with the dedication and collaboration of teachers, administrators, support staff, and parents.

**FISCAL IMPACT:**

None

**BOARD GOAL(S):**

**Board Focus Goal I - STUDENT NEEDS**

- A. Student Safety and Well Being: Enhance and encourage social, emotional, ethical and civic learning by providing a safe, supportive and diverse environment.
- B. Curriculum and Instruction: Provide a meaningful, innovative learning environment using Common Core, and other student content standards and research-based, progressive, effective instructional methodology, instructional materials, staff development and technology that will ensure student success in career and college.

**Board Focus Goal II – FISCAL ACCOUNTABILITY**

Keep the district fiscally solvent through prudent LCAP aligned budget processes in order to meet the needs of our students.

**Board Focus Goal II - COMMUNICATION / COMMUNITY INVOLVEMENT**

Establish and maintain consistent and effective communication that is transparent and timely in an effort to provide and receive information that will engage and educate our District and community.

**Board Focus Goal VI – CULTURE OF EXCELLENCE**

Create and promote programs that support, reward and incentivize employees to perform at exceptional levels for the benefit of our students.



**Date: October 10, 2023**

**Title: English Learner Master Plan**

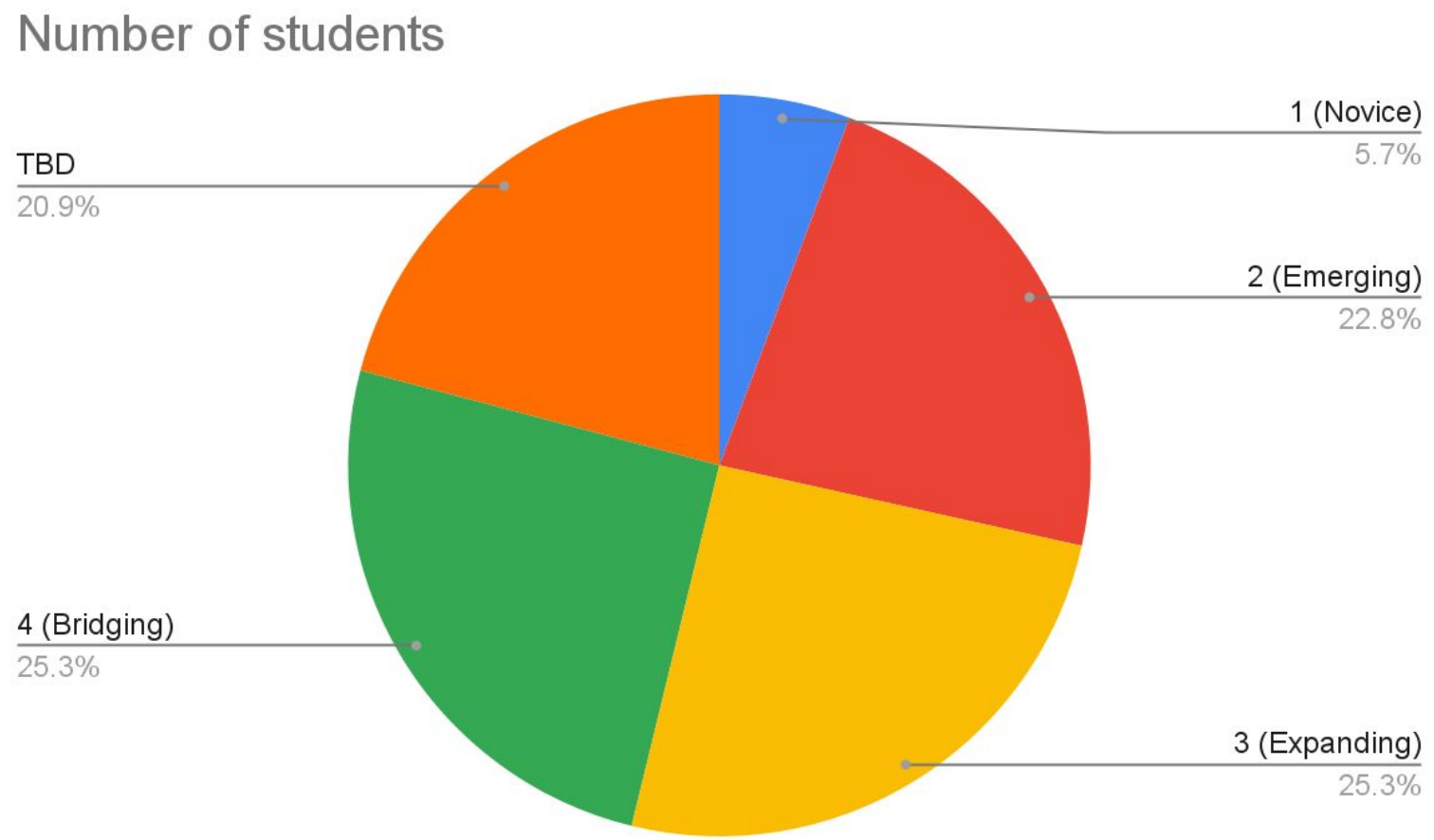
Rescue Union School District Board of Education

# Topics to be covered

- Demographics
- Master Plan
  - Purpose
  - Goals
  - Process
  - Instruction & supports
  - Reclassification
- Questions?
- Action Item - Approve the updated EL Master Plan

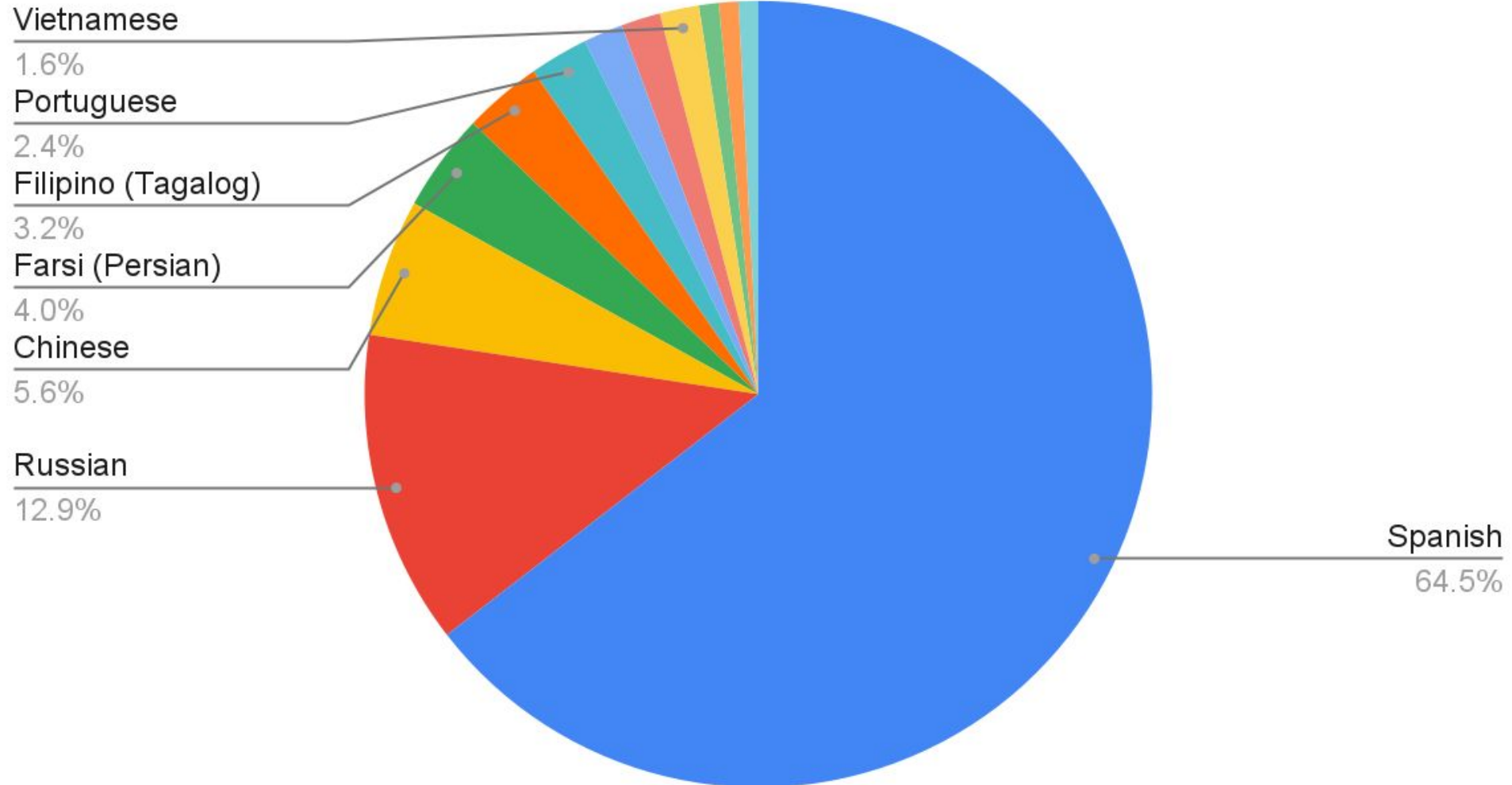


# Proficiency Levels of our 158 EL Students



# Languages Spoken

## Number of students



# Master Plan

## Purpose

The updated Master Plan details the identification, goals, and celebrations of our RUSD English Learner program.

It also describes how we achieve a ***culture of excellence*** by providing access and opportunities for our emerging multilingual students.



English Learner Master Plan

Superintendent Jim Shoemake

Board of Trustees

Michael Gordon, President

Kim White, Vice President

Michelle Bebout, Clerk

Michael Flaherty, Member

Jamie Hunter, Member





# Master Plan

## Goals (p.1)

- Develop each student's ***fluency in listening, speaking, reading, and writing English*** as quickly and efficiently as possible;
- Provide ***equal opportunity*** for academic achievement in all content areas by offering ***effectively implemented programs*** based on sound theory;
- Provide a pathway for progress and ***reclassification of multilingual students***
- Promote ***positive self-concepts and cross-cultural understandings*** by and for all students
- Encourage opportunities for ***parent/guardian engagement*** in order to facilitate successful student outcomes
- Provide ***professional development*** to staff in the instruction and cross-cultural skills necessary to support the achievement of English Learners.



# Master Plan

## Process

- 1) Home Language Survey
- 2) Initial ELPAC Assessment
- 3) EL Program Instructional Model
- 4) Annual Summative ELPAC
- 5) Reclassification



English Learner Master Plan

Superintendent Jim Shoemake

Board of Trustees

Michael Gordon, President

Kim White, Vice President

Michelle Bebout, Clerk

Michael Flaherty, Member

Jamie Hunter, Member



## Instruction and Supports

- Effective Tier 1 instruction for all students, with specific best practices for English Learners included (visuals, vocabulary support, online aids)
- 30 minutes of ELD daily
- Additional instruction based on student needs through Tier 2 (supplemental) interventions
- *Based on parent input:* Additional tutoring support provided at the student's school.



# Master Plan

## Reclassification

### Criteria:

- 4 Overall on Summative ELPAC, with 3 or higher subscores
- Standard Nearly Met on CAASPP (grades 3-8) or Trimester benchmark assessment (TK-2)
- Teacher & Administrator consultation
- Parent conference

Year	Number of Students Reclassified
2023	22
2024	30

*Celebrate!*



# Master Plan

## Family Engagement

*What is your child's favorite part of school?*

*What is your child's least favorite part of school?*

*What could help your child do even better in school?*



English Learner Master Plan

Superintendent Jim Shoemake

Board of Trustees

Michael Gordon, President

Kim White, Vice President

Michelle Bebout, Clerk

Michael Flaherty, Member

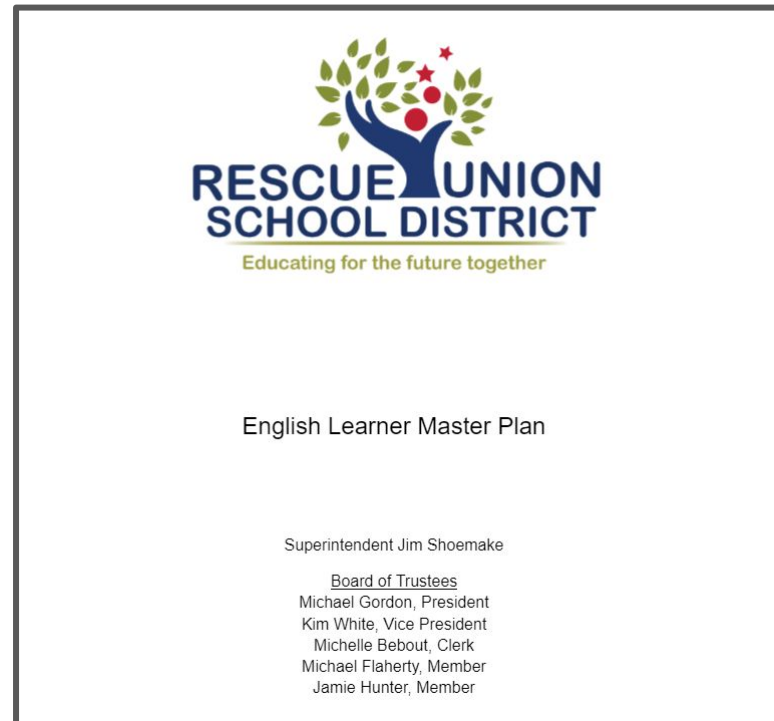
Jamie Hunter, Member



# Questions?



## Approval of the RUSD EL Master Plan





# Food and Nutrition

2023-2024





## Meet our Team

### **Joanne Ruggeri**

Is our Central Kitchen Cook. She manages everything from ordering, production/transport records, deliveries, oversees food production and more



### **Laura Knight and Kim Andreasen**

Laura is our department secretary who handles menu and recipe data entries nutritional analysis of menus, applications, subs and all things food service. She is my right hand!

## Central Kitchen Helpers



Amy Warney has been our helper and is moving over to Rescue Elementary. She is training Brianna Brown in the art of making Ranch Dressing. Tashina Clarin and Chanda Sjotvedt also help in the kitchen as well as at sites

## Pleasant Grove Middle School



**Charisse James and Chanda Sjotvedt<sup>3</sup>**

# Marina Village Middle School



**Amanda Devereux, Sue Peiffer, &  
Leslie Thompson**

# Lake View Elementary

**Adriana Scott, Kenna Denkers, &  
Dawn Shelton**





# Jackson Elementary

**Alicia Moore & Esabel De La Cruz**



# Green Valley



**Autumn Sierra & Darcey Cobb**

## Rescue Elementary



Julie Fruge & Tashina Clarin

## Lake Forest Elementary

Heather Sweet & Quynh Tran



## 2023 - 2024 Average Meals Served by Site DAILY

SITE	ENROLLMENT		AVG. BREAKFAST		AVG. LUNCH	
	22/23	23/24	22/23	23/24	22/23	23/24
Green Valley	347	346	186	160	228	205
Jackson	459	499	181	149	199	211
Lake Forest	453	412	205	142	250	212
Lake View	545	533	217	213	278	249
Rescue	497	498	165	112	363	352
Pleasant Grove	476	462	43	30	336	334
Marina Village	736	738	51	162	434	438

# History of how many we have served

	2018/19	2019/20	2020/21 *	2021/22	2022/23	2023/24
<b>Enrollment</b>	3,691	3,668	3,505	3,589	3,536	3,495
<b>Funding Type</b>	Free/Reduced/Paid	Aug - Feb: Free/Reduced/Paid	Pandemic Free	Pandemic Free	Universal Meals Free	Universal Meals Free
		March-May: Pandemic Free				Aug & Sept
<b>Breakfast</b>	79,944	87,392	317,160	170,948	174,189	33,545
<b>Lunch</b>	151,140	164,652	700,900	357,545	364,976	72,560

\*20/21 Sept-Feb fed ALL students, 7 days a week

# One-Time State and Federal Funding

2021 Kitchen Infrastructure/Training	\$ 85,938
2021 Supply Chain Assistance	\$ 88,415
<b>Total</b>	<b>\$174,353</b>
2022 Kitchen Infrastructure/Training (270,966+277,926 40% scratch)	\$498,892
2022 Supply Chain Assistance	\$114,157
2022 Local Foods for Schools	\$ 26,497.84
2022 Equipment Grant	\$100,000
<b>Total</b>	<b>\$739,546.84</b>
2023 School Food Best Practice	\$ 97,216.47
2023 Supply Chain Assistance	TBD
2023 Kitchen Infrastructure (reallocate \$15 M)	TBD
<b>Total to date for 2023</b>	<b>\$97,216.47</b>
<b>TOTAL ONE-TIME FUNDING LAST 3 YEARS</b>	<b>\$1,011,116.31</b>



# Training Day August 2, 2023 with Rescue and Buckeye Food Service Staff



***Morning had 6 small group sessions.***

***Afternoon we had an Offer Vs. Serve Training and How to use the new ovens.***

## **Eating with Your Eyes**

Presented by Joanne Ruggeri, Rescue Central Kitchen Cook - How to serve up our new scratch food items, what to serve them in and how to present them to look appetizing for the students.



## **Kitchen Logs Made Easy**

Presented by Kristy Clough Buckeye Central Kitchen Cook - How to fill out those logs, and hands on how to calibrate thermometers.

# Training Day August 2, 2023 with Rescue and Buckeye Food Service Staff



## Hands on Retherm

Presented by Robert Uffens with Uniform Food Service - Robert did a presentation on the Crescor Retherm, then he had a small group station to go over hands on use of the new equipment.



## Success with Production Records

Presented by Laura Knight, Rescue Secretary - Laura went in depth on our online production records.

# Training Day August 2, 2023 with Rescue and Buckeye Food Service Staff



## Civil Rights

Presented by Imelda Schwab, Buckeye Assistant to the Director - Making sure we are welcoming to all students into our kitchens

## Creating Magic in the Kitchen

Presented by Julie Fruge, Rescue Food Service Worker - How to make your kitchen inviting and fun for the students



# How do we development our menus

Our emphasis towards end of last year was developing recipes and taste testing with students with emphasis on scratch made items to meet our 40% scratch cooking goal.

- Joint effort with cooks, assistants, input from site staff
- Taste testing with our students
- Recipes we worked on developing: Overnight Oats, Granola, Pan Bread, Smoothies, Scrambled Eggs, Chile Verde bowl with Mexican rice, Dumplings with Fried Rice, Grilled cheese, Salsa, cucumber salad, pasta salad, ranch dressing.

## Roadblocks to our progress

- Appropriate amount of staffing in the central kitchen and at the sites
  - As minimum wage increases, it is hard to stay competitive, hiring has been extremely challenging
- Lack of space for large amounts of scratch cooking and prep work
- Lack of storage for all the additional ingredients needed for scratch meals



# Sampling with our students



**Apples &  
Cinnamon  
Overnight Oats**



**Peaches N Cream  
Overnight Oats**



# Central Kitchen



**Salsa**



**Processing  
Onions for Salsa**



**Processing  
Watermelon**





# Central Kitchen



**Black Bean Rice**



**Chile verde with  
Black Bean Rice**



**Fried Rice served with  
Orange Chicken and  
Chicken Dumplings**

# Central Kitchen



**Granola**



**Cinnamon Crumble Pan Bread**



# Breakfast Items



**Scrambled eggs,  
bacon and biscuit**



**Orange Dream  
Smoothie**



**TOP CENTER: Cinnamon  
Crumble Pan Bread  
BOTTOM CENTER:  
Overnight Oats  
w/granola, whip cream  
and cinnamon sprinkle**



# Elementary Meals



Grilled  
Cheese



Cheeseburger 100% Beef



Chicken  
Drumstick



Miller's Hot dog  
100% Beef



Chicken Dumplings w/fried rice



Elementary Garden Bar



# Middle Schools



**Cheese Pizza**



**Yogurt Parfait  
w/homemade  
granola**



**Asian Salad**



**Turkey Sandwich**



**Chile Verde  
Bowl w/black  
bean rice**



**Pasta Salad**



**Chicken Bistro**

# Farm to School - Meet a few of our Farmers



West Sacramento

JSM ORGANICS  
Royal Oaks, CA



Lodi, CA



Marysville

**Kiwi \* Tropikiwi**  
**Mandarins \* Persimmons**  
**Pluots \* Plums**

**RESCUE UNION SCHOOL DISTRICT**

**AGENDA ITEM: SOLAR POWER PURCHASE AGREEMENT (PPA) PROPOSAL**

**RECOMMENDATION:**

The Superintendent recommends the Board approve the Solar Power Purchase Agreement (PPA) contract with New Energy Equity.

**BACKGROUND:**

On December 12, 2022 the California Public Utilities Commission (CPUC) adopted new policies and rates related to solar. These new policies and rates will apply to customers who submit an interconnection application on or after April 15, 2023. These changes limit the cost savings of solar projects significantly. In December 2022, after the CPUC made their decision, Rescue USD leadership met with Bryce Chastain, a lawyer with Atkinson, Andelson, Loya, Ruud, & Romo (AALRR) who specializes in solar law. Subsequently Mr. Chastain put us in touch with EcoMotion. EcoMotion is a company with expertise in objective solar financial analysis and procurement options. Using a solar financial analysis tool, their professionals check optimal system sizing and orientation, as well as rate shift options, to ascertain the best economic scenarios to present to clients. Their team has managed solar projects for clients both with cash purchases and power purchase agreements (PPAs). We subsequently contracted with EcoMotion to assist us with seeking proposals from solar energy companies that have demonstrated qualifications, resources, expertise, and experience sufficient to undertake and complete our project on a timely and cost-efficient basis. We opened bids and had four companies submit their proposals. EcoMotion assisted our team with vetting the proposals and Excite Energy was selected as our vendor. In March of 2023 the Board approved a contract with Excite Energy that had several tasks for the company to complete before the board would authorize construction to begin. Excite Energy is based in El Dorado Hills with over 1000 successful projects since 2014. Excite Energy subsequently met the CPUC interconnection timelines to enable Rescue USD to qualify for the more favorable NEM 2.0 billing and we began contract negotiations.

**STATUS:**

While Excite Energy responded to the solar bid and will be installing our equipment, the financial agreement is with New Energy Equity. This is the entity providing the financing and will be the owner of the solar equipment. The PPA is an agreement for us to purchase the power generated from the solar panels at a defined rate that will be less than PG&E. Our attorney, Mr. Chastain, has worked with us on the contract language to ensure the final agreement provides the utmost protections to the District. As of today Excite Energy and New Energy Equity have met all deliverables required for the Board to approve this contract.

**FISCAL IMPACT:**

Based on Excite Energy's proposal and assuming a PG&E annual cost escalation of 4%, we anticipate approximately \$145,000 savings for the first year, increasing each year to an average of \$250k per year over the next 25 years.

**BOARD GOAL(S):**

**Board Focus Goal II – FISCAL ACCOUNTABILITY**

Keep the district fiscally solvent through prudent LCAP aligned budget processes to meet the needs of our students.

**Board Focus Goal IV - STAFF NEEDS**

Attract and retain diverse, knowledgeable, dedicated employees who are skilled and supported in their commitment to provide quality education for our students.

**Board Focus Goal V - FACILITY / HOUSING**

Build, improve and maintain school facilities to meet current and future education needs while integrating the most effective and efficient use of resources.

**Board Focus Goal VI – CULTURE OF EXCELLENCE**

Create and promote programs that support, reward and incentivize employees to perform at exceptional levels for the benefit of our students.

**RESCUE UNION SCHOOL DISTRICT  
2390 BASS LAKE ROAD  
RESCUE, CA 95672**

# **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Board of Trustees of the Rescue Union School District will hold a public hearing at the District Office Boardroom, located at 2390 Bass Lake Road, Rescue, CA, on Tuesday, October 10, 2023, at 6:30 p.m.

This public hearing will be held to receive recommendations and comments from members of the public regarding the specific actions and expenditures purposed to be included in the Rescue Union School District Solar PPA Plan. You can review the plan information at <http://www.rescueusd.org/School-Board/Agendas--Minutes/index.html> under Public Hearings/Notices tab.

Please Note: Information to access the meeting will be listed on the October 10, 2023 Regular Board Agenda. If you wish to address the Board regarding this item, you may do so during the hearing or email a statement by 12:00 p.m. on October 10th to [cmason@rescueusd.org](mailto:cmason@rescueusd.org). Questions may also be sent to the above email address or members of the public may call the District Office at (530) 677-4461.

Posted: September 29, 2023

## Solar Power Purchase Master Agreement

This Solar Power Purchase Master Agreement (“**Agreement**”) is entered into [REDACTED], 2023 (“**Effective Date**”) by and between [REDACTED] (“**Seller**”) and the [Rescue Union School District], a political subdivision of the State of California (“**Purchaser**”) (each a “**Party**” and collectively the “**Parties**”).

### RECITALS

Purchaser owns or leases various properties, and wishes to put solar electricity generation systems on those properties.

Seller is willing to finance, construct, operate, and maintain carports with solar electricity generation systems on Purchaser’s property. In return, Purchaser is willing to enter into this Agreement to purchase power and certain environmental credits from Seller over the Term of this Agreement.

This Agreement sets forth the terms and conditions of the purchase and sale of System Output from the solar electricity generation systems (the “**System(s)**”) described in the Project Contract(s). Each individual System will have its own Project Contract (a pro forma copy of which is attached as Appendix A) that will detail the specifics of that System and that will incorporate the terms and conditions of this Agreement.

*Therefore*, the Parties agree as follows:

#### 1. Definitions.

- a. “Additional Term” shall mean an extension of the Initial Term pursuant to the Project Contract and Section 4(b) of this Agreement.
- b. “Affiliate” means, with respect to a person or Party, any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person or Party.
- c. “Agreement” shall have the meaning set forth in the Preamble.
- d. “Approval” shall mean the various permits and utility approvals referenced in Section 7(b).
- e. “Business Day” shall mean any day that is not a Saturday, a Sunday, a day on which federally-chartered banks in the United States are authorized or required to be closed, or any other day on which the State of California’s administrative offices are closed.
- f. “Change in Law” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation exclusive of those made by the board of the Purchaser or El Dorado County office of Education, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.
- g. “Claim” shall have the meaning set forth in Section 18(b).
- h. “Commencement of Installation” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- i. “Commercial Operation” means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in the Project Contract, and has permission to operate from the relevant Governmental Authority.
- j. “Commercial Operation Date” shall have the meaning set forth in Section 7(e).
- k. “Confidential Information” shall have the meaning set forth in Section 21.
- l. “Contract Price” shall mean the \$/kWh rate at which Purchaser purchases System Output from Seller. The Contract



Rate is set forth in the applicable Project Contract.

- m.** “Contract Year” shall mean a twelve-month period commencing on the Commercial Operation Date or an anniversary of the Commercial Operation Date. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- n.** “Defaulting Party” shall have the meaning set forth in Section 14.
- o.** “Delivery Point” is the point where System Output is delivered to and where title to the System Output transfers from Seller to Purchaser. The Delivery Point is set forth in the applicable Project Contract.
- p.** “Effective Date” shall have the meaning set forth in the Preamble.
- q.** “Event of Default” shall have the meaning set forth in Section 14.
- r.** “Fair Market Value” shall have the meaning set forth in Section 17.
- s.** “Feed-in Tariff” shall mean feed-in-tariffs, net metering credits, or similar credits, payments, equity or benefits (not including incentives or rebates provided under the California Solar Initiative) derived from electrical energy exported to the electrical utility grid.
- t.** “Financing Party” shall have the meaning set forth in Section 20(b).
- u.** “Force Majeure Event” means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming a Force Majeure Event, including, without limitation, failure or interruption of the production, delivery or acceptance of System Output due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; epidemic; pandemic; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller’s control or due to a Force Majeure Event.
- v.** “Governmental Authority” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.
- w.** “Hazardous Substance” means any chemical, waste, or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- x.** “Improvement” shall mean any buildings and other improvements on the Premises other than the System.
- y.** “Incentives” means (i) a payment paid by a utility or state or local or federal Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs or Feed-in Fariffs.
- z.** “Indemnified Party” shall have the meaning set forth in Section 18.
- aa.** “Indemnifying Party” shall have the meaning set forth in Section 18.



- bb.** “Initial Term” shall be as set forth in the Project Contract.
- cc.** “Insolation” shall mean access to sunlight.
- dd.** “Investment Grade” means the assignee has a long-term unsecured debt rating from Moody’s or S&P of at least Baa3 from Moody’s and/or at least BBB- from S&P.
- ee.** “Liabilities” shall have the meaning set forth in Section 18.
- ff.** “Lost Income” shall have the meaning set forth in Section 8.
- gg.** “Meter” shall mean Seller’s revenue grade meter at the Delivery Point.
- hh.** “Non-Defaulting Party” shall have the meaning set forth in Section 14.
- ii.** “Outage” shall have the meaning set forth in Section 8(d).
- jj.** “Outage Allowance” shall have the meaning set forth in Section 8(d).
- kk.** “Party” or “Parties” shall have the meaning set forth in the Preamble.
- ll.** “Payment Default” shall have the meaning set forth in Section 14(a).
- mm.** “Premises” shall mean the Purchaser’s property where the System will be located. The Premises are depicted in the applicable Project Contract.
- nn.** “Project Contract” shall mean the individual contracts for each System. The Project Contract shall be generally in the form of Appendix A and shall incorporate the terms and conditions of this Agreement.
- oo.** “Purchase Commitment” shall have the meaning set forth in Section 3(a).
- pp.** “Purchaser” shall have the meaning set forth in the Preamble.
- qq.** “REC” means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.
- rr.** “Seller” shall have the meaning set forth in the Preamble.
- ss.** “Easement” shall have the meaning set forth in Section 9.
- tt.** “Step-In Rights” shall have the meaning set forth in Section 14(b).
- uu.** “System” shall have the meaning set forth in the Recitals, and each System shall be specified in the applicable Project Contract.
- vv.** “System Output” shall mean the electric energy generated by the System.
- ww.** “Term” shall have the meaning set forth in Section 4(a).
- xx.** “Termination Payment” shall mean a termination payment made by Purchaser to Seller, pursuant to this Agreement and the schedule set forth in the applicable Project Contract.
- yy.** “Utility” shall be the utility that the System is interconnected to, \_\_\_\_.
- zz.** “Exclusion Event” shall mean any of the following events or circumstances, except to the extent caused by Seller’s negligence or breach of its obligations under this Agreement: (i) Buyer’s negligence or breach of its obligations under

this Agreement and (ii) grid failure, outage or Utility curtailment.

**2. Relationship between this Agreement and Project Contracts.**

The terms and conditions in this Agreement shall be incorporated into and govern the individual Project Contracts. For each System, the Parties (or their Affiliate) shall enter into an individual Project Contract in the form of Appendix A. The individual Project Contract shall identify such aspects as the specific System, the Contract Price, Termination Payment, and other matters unique to that System.

**3. Purchase and Sale of System Output.**

- a. **Output and Delivery Point.** For each System, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the System Output during the Term (the “**Purchase Commitment**”). System Output shall be delivered to Purchaser at the Delivery Point. Title to, and risk of loss for, the System Output passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser’s electricity consumption requirements at the Premises exceed the output of the System.
- b. **Net Metering.** Purchaser, with the support and assistance of Seller, will make arrangements with Utility so that System Output in excess of Purchaser’s requirements may be delivered to the Utility through the Delivery Point, and Purchaser shall receive any and all Feed-in Tariffs, credits or payments from the Utility that may be available under net metering or similar programs.
- c. **Access to Data.** Seller shall provide Purchaser with access to data of the System in order to permit Purchaser to monitor System performance and System Output.

**4. Term and Termination.**

- a. **Effective Date; Term.** This Agreement is effective as of the Effective Date and will terminate the latter of three (3) years after the Effective Date or the termination of all Project Contracts subject to this Agreement. The System Output supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
- b. **Additional Terms.** The Parties may agree in writing to extend a Project Contract for one or more Additional Term(s), as set forth in the applicable Project Contract, at a Contract Price to be agreed.
- c. **Termination of a Project Contract Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation of a System, (i) circumstances arise that have been excluded from Contract Price calculations in the Project Contract, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have attempted to negotiate a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate the applicable Project Contract by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment.
- d. **Termination by Purchaser for Delay.** If Commencement of Installation of a System has not occurred twenty-four (24) months after execution of the applicable Project Contract, Purchaser may terminate the Project Contract by providing thirty (30) days’ prior written notice to Seller; provided that the Project Contract will not terminate pursuant to this Section 4(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, if Commercial Operations has not occurred within three (3) years after execution of the Project Contract, then Purchaser may terminate the Project Contract immediately by providing written notice to Seller. Neither Purchaser nor Seller shall be liable for any damages in connection with any such termination under this section.

**5. Billing and Payment; Taxes.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the following services:
  - i. **Output.** Purchaser shall purchase the System Output generated by the System and delivered to the Delivery Point at the Contract Price. The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of System Output delivered to the Delivery Point during the applicable month, as

measured by the Meter.

- b. **Monthly Statements.** Seller shall bill Purchaser monthly. Such monthly statements shall detail (i) the amount of System Output produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and applicable Project Contract, and (iii) the total amount due from Purchaser.
- c. **Payment Terms.** All amounts due under this Agreement and the Project Contracts are due and payable net thirty (30) days following receipt of the monthly statement. All payments shall be made in U.S. dollars.
- d. **Taxes.**
  - i. **Purchaser's Taxes.** Purchaser is responsible for (if applicable): (1) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of System Output produced by the System, any personal property taxes imposed on the System, or the interconnection of the System to the utility's electricity distribution system; and (2) property taxes.
  - ii. **Seller's Taxes.** Seller is responsible for payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of System Output under this Agreement or Project Contract.
- e. **Disputed Statements.** If Purchaser objects to all or a portion of a monthly statement, Purchaser shall notify Seller in writing within ten (10) Business Days of receipt of any monthly statement of any portion of the invoiced amount that it has a reasonable basis to dispute. Purchaser shall (i) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections, and (ii) on or before the date payment of the payment is due, pay the undisputed portion of the monthly statement. The contested portion of any invoiced amount shall not relieve Purchaser of its obligation to pay the uncontested portion of such monthly statement when due. If Purchaser does not object within ten (10) Business Days of receipt of any monthly statement, Purchaser shall be obligated to pay the full amount of such monthly statement; provided, however, that Purchaser may subsequently object to such monthly statement and, if such objection proves to be correct, Purchaser shall be entitled to a full refund of the disputed amount.
- f. **Production Guarantee.** Seller guarantees that not less than ninety percent (90%) of the Expected System Output tabulated in Appendix C hereof (subject to adjustment as set forth below) will be produced every Measurement Period during the Term (the "Production Guarantee"). After the end of every Contract Year beginning with the third Contract Year, Seller will compare the average System Output that has occurred over the last three Contract Years ("Average System Output") against Expected System Output for such Contract Years from Appendix C hereof after (A) reducing Expected System Output to account for any loss of System Output attributable to (i) Outage Allowance, (ii) decreases in Insolation, (iii) Purchaser default, (iv) Exclusion Event, and (v) and Force Majeure Events, and then (B) multiplying the result by the Weather Adjustment, below, (collectively, the "Adjusted Expected System Output").
  - i. **Energy Savings Report.** Seller will provide a detailed reconciliation of the Production Guarantee to Purchaser annually, within ninety (90) days after the end of each Contract Year, beginning at the end of the third Contract Year. Such reconciliation will compare annual System Output, Expected System Output, Adjusted Expected System Output, and any Production Shortfalls and Production Shortfall Penalties that may have occurred, if any.
  - ii. **Production Shortfall.** If the Average System Output for a Contract Year was less than ninety percent (90%) of the Adjusted Expected System Output, then the "Production Shortfall" (in units of kWh) will be the difference between (i) ninety percent (90%) of the Adjusted Expected System Output minus (ii) the Average System Output for the period. The existence of a Production Shortfall will not be an event of default, but Seller will owe Purchaser a Production Shortfall Penalty which will be credited to Purchaser on the subsequent System Output Invoice.
  - iii. **Production Shortfall Penalty.** The "Production Shortfall Penalty" will be an amount, expressed in Dollars, calculated by multiplying (i) the Production Shortfall (expressed in kWh) by (ii) the Shortfall Rate.
  - iv. **Shortfall Rate.** The "Shortfall Rate" will be determined by taking the average avoided cost for electricity from the Utility expressed in kWh in the relevant Contract Year that the Purchaser pays for any electricity supplied by the Utility, and then subtracting the PPA rate, which shall be equivalent to the unrealized savings.
  - v. **Weather Adjustment.** Whenever the annual incident solar irradiance ("Flux") for a Contract Year, as measured by the National Oceanic and Atmospheric Administration ("NOAA") at its Sacramento weather station is less than or greater than the expected annual Flux at said station, the Adjusted Expected System Output for such Contract Year will be multiplied by a ratio, expressed as a percentage, calculated by dividing (i) the measured annual Flux for at such station for such Contract Year by (ii) the expected annual Flux at such station (the "Weather Adjustment").

**6. RECs and Incentives.**

- a. **RECs.** Purchaser is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall cooperate with Purchaser in obtaining, securing and transferring any and all RECs. Seller is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Purchaser. Seller shall not make any filing or statements inconsistent with Purchaser's ownership interests in the RECs. If any RECs are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.
- b. **Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives. Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the Incentives. If any Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller.

**7. Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to the terms of this Agreement.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "Approval"):
  - i. any zoning, land use, and building permits required for Seller to construct, install, and operate the System; and
  - ii. any agreements and approvals from the utility necessary to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within 365 days after execution of a Project Contract.
- d. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date set forth in such notice, the "**Commercial Operation Date**"). Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser's reasonable request.
- f. **Compliance with all Laws and Regulations.** Seller (and/or any contractors or subcontractors working on the System) shall comply with all applicable laws, regulations, and codes during the construction and operation of the System.
- g. **Non-Disruption of Purchaser's Operation.** Seller (and/or any contractors or subcontractors working on the System) shall use reasonable efforts to construct the System in a manner that does not materially interfere with or disrupt the Purchaser's operations. Seller shall coordinate with Purchaser to facilitate construction of the System in a timely, cooperative, and mutually agreeable manner. Seller (and/or any contractors or subcontractors working on the System) shall keep the Premises free from accumulation of waste materials or rubbish caused by its operations. After construction, Seller (and/or any contractors or subcontractors working on the System) shall remove all of its waste materials and rubbish from the Premises.

**8. Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement and Project Contract, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulations, and local building codes.

- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have ten (10) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such ten (10) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate the Project Contract under Section 4(c) above.
- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any disruption to Purchaser's operations. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees, students, or contractors.
- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the forty-eight (48) hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 8(c) or requested by Purchaser under this Section 8(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for System Output from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of System Output that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement and the applicable Project Contract.
- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement that may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations, or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 10 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 8(b) and 8(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits. In the case of any such relocation, Purchaser shall reimburse Seller for all costs of such relocation, including the loss of revenues, and any loss of Incentives ("**Lost Income**").
- g. **Installation, Repair and Removal.** Seller will cause each System to be designed, engineered, installed, repaired and removed substantially in accordance with the terms of this Agreement and at the sole cost of the Seller. Purchaser shall have the right to review and approve all construction plans, which approval shall not be unreasonably denied, delayed or conditioned. Subject to the terms of this Agreement, Seller shall perform the installation of the Systems in a manner that minimizes inconvenience to and interference with Purchaser.
- i. **Seller's Contractor and Consultants.** Seller shall ensure that any party contracting with Seller for any engineering, procurement, design, installation or construction of the System shall possess sufficient knowledge, experience, expertise, licensing, registration, and financial capacity and creditworthiness necessary for satisfactory completion of Seller's obligations under this Agreement. The contractor performing the construction work on the Project shall possess a Class B and C-10 California Contractor State License, be a registered public works contractor in accordance pursuant to Labor Code Section 1725.5, and all other required licenses for performing work under this Agreement, prior to performing any work on the Project. Seller represents and warrants that it has the financial capacity, creditworthiness and bonding sufficient to satisfy all of Seller's



obligations under this Agreement, including, but not limited to, any instance of default or other failure by Seller's contractor(s) to complete the work required to satisfy Seller's obligations in this Agreement. Prior to contracting with any such party, Seller shall obtain and review the qualification of such party and complete any necessary background check or fingerprinting required by law or District. Seller shall further procure from the contractor performance and payment bonds and any other assurances as Seller deems reasonably necessary to secure contractor's timely completion of the Project.

- ii. DSA Oversight. Seller shall procure all permits and approvals required by the DSA which are directly related to the design, installation, construction and operation of the Systems, including but not limited to any exterior improvements and/or exterior upgrades the DSA may require of the Seller in order for the Systems to comply the Field Act (Education Code §§17280-17317), American with Disabilities Act ("ADA," 42 U.S. Code § 12100, et seq.) and related provisions of the Unruh Act (Civil Code, §§ 51, et seq.). However, Seller shall not be responsible for satisfying any DSA requirements relating to (a) any pre-existing, open and/or unresolved DSA project applications that the Purchaser may be subject to which are not directly related to the Systems, and (b) any requirements or improvements required by the DSA resulting in the construction, improvement or renovation of existing buildings and/or structures on the Site.
  - (1) Third Party Inspections. Purchaser shall be entitled to select (subject to Seller's approval not to be unreasonably withheld) any company that performs inspections of the materials and equipment for the design, engineering, procurement, construction or installation of the Systems, including, but not limited to, any inspections to verify the Systems' compliance with the applicable law. Seller shall have the right to approve all inspection companies, including the inspector of record, required in connection with the approval of the Systems by The Division of State Architect (the "DSA"), which approval shall not unreasonably be withheld. Where required, Purchaser shall contract directly with DSA inspectors but Seller shall be responsible for reimbursing the Purchaser for Purchaser's payments under any such contract. The rights and obligations of Purchaser and Seller under this Section shall be subject to the following:
    - (2) When required to contract directly with DSA inspectors, Purchaser shall use an agreement approved by Seller in its reasonable discretion; provided that at a minimum such agreement shall include, where requested by Seller, provisions granting Seller the right to (a) coordinate with and participate in the management of the entire scope of services to be performed by such inspector, (b) communicate directly with such inspectors and, where necessary, (c) direct the inspector pursuant to such agreement to the extent required by law; and
    - (3) Purchaser shall fully cooperate with Seller to complete and submit all paperwork and forms required for DSA approval.
    - (4) If ADA compliance requires the regrading of any Site for the installation of a System, then the cost of such compliance, shall be borne by the Purchaser to the extent of the expense specifically incurred for grading and not the entire expense of ADA compliance.
- iii. Performance and Payment Bonds. Seller shall deliver to Purchaser evidence that the prime contractor, or each contractor if there is not a single prime contractor, performing the construction and installation services of the Systems maintains payment and performance bonding in favor of the Seller and meeting the following requirements. Such evidence shall be provided to the Purchaser prior to the commencement of construction on any Property:
  - (1) Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the faithful performance of the contractor of its contract with Seller, which shall name Purchaser as a co-obligee; and
  - (2) Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.
- iv. Prevailing Wages. This Project is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. Seller shall comply, or cause to be complied, with all applicable provisions of the California Prevailing Wage Law, including the following
  - (1) Wages.
    - Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of Purchaser has ascertained the general prevailing rate of per diem wages in the locality in which this

public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

- Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein.
- Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.
- Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.
- Each worker in work on the System on Purchaser’s Property shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between Seller, or any subcontractors of Seller, and such workers.
- Seller shall, as a penalty to the Purchaser, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Seller.
- Copies of the determined prevailing wage rates are on file and available upon request at the Purchaser’s office. Purchaser shall provide Seller with current prevailing wage rates, in writing. Seller shall post, or cause to be posted, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.
- Any worker employed to perform work on the System which is not covered by any classification available in the Purchaser office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

(2) Record Of Wages Paid: Inspection. Pursuant to Labor Code § 1776, Seller stipulates to the following:

- Seller and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.
- The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Seller, or Seller’s subcontractors, on the following basis:
- A certified copy of an employee’s payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.
- A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of the Purchaser, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.
- A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either the Purchaser, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Seller, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Seller or Seller’s subcontractors.
- Seller shall file, or caused to be filed, a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt

of the written request.

- Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the Purchaser, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Seller or subcontractors performing the work shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- Seller shall inform the Purchaser of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- In the event of noncompliance with the requirements of this Section, Seller shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Seller must comply with this Section. Should noncompliance still be evident after such 10-day period, Seller shall pay a penalty in the amount prescribed by statute to the Purchaser for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.
- The responsibility for compliance with this Section shall rest upon Seller.

(3) Hours Of Work.

- As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Seller stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Seller or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed on the Purchaser's Property by employees or subcontractors of Seller in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- Seller shall pay to the Purchaser a penalty in the amount prescribed by statute for each worker employed in the execution of these Construction Provisions by Seller or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by Seller is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to Purchaser, unless otherwise agreed to by the parties.
- Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of Seller and in compliance with applicable ordinances.

(4) Apprentices.

- All apprentices employed by Seller to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of

the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

- When Seller to whom the work under these Construction Provisions is awarded by the Purchaser or any Subcontractor under Seller, in performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, Seller and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving Seller or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Seller or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.
  - “Apprenticeable craft or trade” as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.
  - Seller, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other Sellers in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Seller employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other Sellers do, but where the trust fund administrators are unable to accept the funds, Sellers not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. Seller or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.
  - The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with Seller.
  - The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- v. Safety Precautions and Programs. Seller shall ensure that its contractor and subcontractors performing work on the Easement Property comply with the following safety precautions.
- vi. Seller's contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the construction and installation of the Systems, for maintaining all safety and health conditions on each site and for ensuring against and/or correcting any hazardous conditions on the site.
- vii. Certain work may be ongoing at the time school is in session; therefore, Seller's contractor shall take precautions to prevent injury and access to children and staff and shall comply with the Purchaser's guidelines for onsite safety. Material storage and vehicle access and parking shall be subject to Purchaser approval.
- viii. The use of alcohol, drugs, or tobacco will not be permitted on Purchaser property. Workers employed by Seller's contractor or subcontractors shall have no contact with students. All workers will present themselves with appropriate language, actions and work wear while on construction site.
- ix. Seller's contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents and overall jobsite safety for contractor/subcontractor employees and visitors.
- x. Seller shall ensure that all person entering the Properties to construct or work on the System comply with the provisions of California Education Code § 45125.1, regarding the submission of fingerprints to the California

Department of Justice and the completion of criminal background investigations of employees of entities with a contract with a school district. Seller shall not permit any person entering the Properties to construct or work on the Projects to have any contact with Purchaser pupils until such time as Seller has verified in writing to Purchaser that such person has not been convicted of a felony, as defined in Education Code § 45125.1.

**9. Miscellaneous Rights and Obligations of the Parties.**

- a. **Easement Access Rights.** Purchaser and Seller are entering into a separate Easement agreement, the form of which is set forth as Appendix C, providing for access to, on, over, under and across the Premises during the Term (the “**Easement**”), for the purposes of performing all of Seller’s obligations and enforcing all of Seller’s rights set forth in this Agreement and Project Contract and otherwise as required by Seller in order to effectuate the purposes of this Agreement and Project Contract. During the Term, Purchaser shall preserve and protect Seller’s rights under the Easement and shall not interfere with, or permit any third parties under Purchaser’s control to interfere with, such rights or access. Seller may record a customary memorandum of license in the land records respecting the Easement.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party’s performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment, or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser’s breach of its obligations under this section or (ii) the acts or omissions of Purchaser or its employees, agents, students, invitees, or separate contractors.
- d. **Insolation.** Purchaser acknowledges that unobstructed Insolation is essential to Seller’s performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System’s Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System’s Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System’s Insolation levels as they existed on the effective date of the applicable Project Contract.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement and Project Contracts. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors, and suppliers supplying goods or services to Seller under this Agreement or Project Contract.
- f. **Liens.**
  - i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume, or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature (each a “**Lien**”) on or with respect to the System, except such encumbrances as may be required to allow Seller access to the Premises. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
  - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party’s property as a result of the indemnifying Party’s breach of its obligations under Section 9(f)(i).

**10. Relocation of Purchaser Operations.**



If, during the Term, Purchaser ceases to conduct operations at the Premises, vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to accept the System Output for any other reason (other than an Event of Default by Seller), Purchaser shall provide Seller with as much advance notice as is practicable under the circumstances. Purchaser shall assist Seller in facilitating the assumption of this Agreement by the new occupant of the Premises as permitted under Section 20 or a new power purchase agreement between Seller and a new subscriber. In the event no assignment or new agreement is accomplished for the same Purchase Commitment within 365 days of Purchaser's notice to Seller, Purchaser may elect to terminate this Agreement and pay the Termination Payment. This situation shall not be considered an Event of Default and Purchaser's liability to Seller for such early termination shall be limited to the payment of the Termination Payment.

**11. Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Purchaser must provide sufficient access, space, and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

**12. Measurement.**

- a. **Meter.** The System's electricity output during the Term shall be measured by the Meter at the Delivery Point. Purchaser shall have access to the metered energy output data via online access to the monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter regularly in accordance with manufacturer's recommendations. If the meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior monthly statement shall be adjusted accordingly, and any amounts owed to Purchaser shall be credited against future monthly statement for System Output. If the meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior monthly statement shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during the twelve-month period preceding the test and any amounts owed to Purchaser shall be credited against future monthly statement for System Output.

**13. Force Majeure.**

For purposes of this Section 13 only, the school board of the Rescue Union School District shall not be considered to be a Governmental Authority.

- a. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement or a Project Company in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. Subject to Section 13(b), if the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver System Output to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
- b. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate the applicable Project Contract without either Party having further liability under this Agreement or the Project Contract except: (a) liabilities accrued prior to termination, (b) Seller shall remove the System as required under Section 11 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Project Contract), and (c) if Purchaser elects to terminate the Project Contract in accordance with this section, Purchaser shall pay the applicable Termination Payment (less any costs that were recovered through an insurance claim). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such

actions, then Purchaser shall not have the right to terminate the Project Contract so long as Seller continues to diligently pursue such actions.

#### **14. Default, Remedies and Damages.**

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**,” the other Party is the “**Non-Defaulting Party**,” and each of the following is an “**Event of Default**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within sixty (60) days of the date such payment is due (“**Payment Default**”);
- ii. failure of a Party to secure the release of any Lien not expressly permitted under this Agreement within thirty (30) days following notice of such non-permitted Lien by the other Party;
- iii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Event of Default cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party or the COE becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party or the COE which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser loses its rights to occupy and enjoy the Premises, unless (1) the Parties agree upon a relocation under Section 10 above, or (2) Purchaser pays the Termination Payment set forth in the applicable Project Contract within thirty (30) days after written request by Seller;
- vii. in the case of Purchaser as the Defaulting Party only, Purchaser prevents Seller from performing any material obligation under this Agreement or Project Contract unless such action by Purchaser is (1) is permitted under this Agreement or Project Contract, or (2) is cured within ten (10) days after written notice thereof from Seller.

b. **Remedies.**

- i. **Suspension and Step-in Rights.** Upon the occurrence and during the continuation of an Event of Default by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement or Project Contract until the earlier to occur of the date (a) that Purchaser cures the Event of Default in full, or (b) of termination of this Agreement or applicable Project Contract. Seller’s rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law, or in equity. In the event of an Event of Default by Seller, Purchaser shall not exercise any right to terminate or suspend this Agreement or a Project Contract unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser’s notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition (“**Step-in Rights**”); provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser’s and Seller’s obligations under this Agreement or Project Contract shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement or Project Contract during any cure period.
- ii. **Termination.** Upon the occurrence and during the continuation of an Event of Default, and subject to the Step-in Rights of subsection (i) above, the Non-Defaulting Party may terminate the Project Contract, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of an Event of Default under

Section 14(a)(iv), the Non-Defaulting Party may terminate the Project Contract immediately.

- iii. **Damages Upon Termination by Default.** Upon a termination of a Project Contract pursuant to Section 14(b)(ii), the Defaulting Party shall pay a default termination payment to the Non-Defaulting Party determined as follows:
- (1) **Termination by Seller.** If Seller terminates a Project Contract for an Event of Default, other than a Payment Default caused by a delay in payment due to the independent actions of the County Office of Education (the "COE"), by Purchaser, the default termination payment payable to Seller shall be equal to the sum of (A) the applicable amount according to the Termination Payment schedule set forth in the applicable Project Contract, and (B) any other amounts previously accrued under this Agreement or the Project Contract and owed by Purchaser to Seller
- In the case of an Event of Default resulting from a Payment Default caused by a delay in payment due to the independent actions of the COE, prior to Seller exercising its right to terminate a Project Contract the Purchaser shall have the right to take all reasonable measures to address and overcome such delay, including, without limitation filing within sixty (60) days of the date such payment is due, any and all appropriate legal action to compel the COE to allow, process or make payment as required under this Agreement and diligently pursue such action to a final ruling or judgment of the court, absent such a filing, or in the case of a judgement or ruling in which the COE is not obligated to make a payment to the Seller, or the lack of a judgment or ruling within two years of the filing of the legal action, then the Seller may terminate a Project Contract and a default termination payment shall be payable from Purchaser to Seller equal to the sum of (A) the applicable amount according to the Termination Payment schedule set forth in the applicable Project Contract, and (B) any other amounts previously accrued under this Agreement or the Project Contract and owed by Purchaser to Seller.
- (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates a Project Contract, the defaulting termination payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable (i.e., the present value of the money that Purchaser would have saved had the Agreement remained in effect); (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement or Project Contract and then owed by Seller to Purchaser. The payment determined under this Section 14(b)(iii)(2) cannot be less than zero. This shall not apply in the case of a termination pursuant to Section 4(d), provided that Seller shall have demonstrated reasonable diligence and good faith in prosecuting the Commencement of Installation of each System and Commercial Operation of each System and has not intentionally or for commercial purposes delayed either Commencement of Installation of each System or Commercial Operation of each System.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates a Project Contract prior to the expiration of the Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of the Project Contract and is not a penalty.
- v. **Limitation of Liability.** Seller's maximum liability under this Agreement for a Project to Purchaser, whether in contract, warranty, indemnity, tort, negligence, strict liability, or otherwise, shall in no event exceed the aggregate amount of the remaining expected savings for the Project as outlined for the respective year as outlined in Appendix A.
- c. **Obligations Following Termination.** If a Party terminates a Project Contract pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 11 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of an Event of Default by Purchaser pursuant to Section 14(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(iii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(iii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement or a Project Contract, at law, or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Event of Default under this Agreement or applicable Project Contract.

- ii. **Mitigation Obligation.** Regardless of whether a Project Contract is terminated for an Event of Default, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Event of Default; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in the applicable Project Contract following an Event of Default by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement or a Project Contract, including with respect to payments for System Output that would have been delivered to Purchaser but for a Purchaser breach or Event of Default.

**15. Representations and Warranties.**

**a. General Representations and Warranties.** Each Party represents and warrants to the other the following:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement and each Project Contract have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement and each Project Contract is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents, and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business, and to execute and deliver this Agreement or applicable Project Contract; and such Party is in compliance with all laws that relate to this Agreement or Project Contract in all material respects.

**b. Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Site Rights.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power, and authority to grant the rights conferred in the Easement; (b) such grant does not violate any law, ordinance, rule, or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the rights under the Easement to Seller so that Seller may perform its obligations under this Agreement and applicable Project Contract.
- ii. **No Litigation.** No suit, action, or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement, Project Contract, or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser.
- iii. **Other Agreements.** Neither the execution and delivery of this Agreement or a Project Contract by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement or Project Contract conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iv. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.
- v. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- vi. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

**c. Seller's Warranties.**

- i. If Seller damages any part of the Premises or any Improvement Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.

- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, 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, APPLIES UNDER THIS AGREEMENT OR PROJECT CONTRACT.

**16. Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain insurance for its System(s) at levels at least equivalent to or greater than typical in the solar industry for systems of similar size and type. At a minimum, Seller shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence and \$2,000,000 annual aggregate.
  - ii. **Subcontractor's Insurance.** Without limiting Seller's obligations hereunder, Seller shall also require all subcontractors to maintain in effect throughout the term of this Agreement all the insurance requirements in Section 16(a)(i) above, except that the minimum limits of general liability insurance shall be at least a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence, general aggregate limits of not less than \$2,000,000, limits for products and completed operations of not less than \$2,000,000 aggregate and \$1,000,000 per occurrence, and limits for personal/advertising injury of not less than \$1,000,000 per occurrence and aggregate.
  - iii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence and \$2,000,000 annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is reduced, cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** If requested, prior to the Commencement of Installation (and thereafter upon renewal or replacement of each required policy of insurance), Seller shall provide a "Certificate of Insurance" to Purchaser certifying that coverage as required herein has been obtained. In addition, a certified copy of the policy or policies shall be provided by Seller upon request. A Party's receipt, review, or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement or a Project Contract, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement or a Project Contract.
- e. **Subcontractors.** Each policy shall provide coverage for Purchaser and additional insureds with respect to claims arising from each subcontractor, if any, performing this Agreement or Project Contract, or be accompanied by a certificate of insurance from each subcontractor showing that the subcontractor has identical insurance coverage to the above requirements.

**17. Ownership; Option to Purchase.**

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System and all Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System, and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.



**b. Option to Purchase.**

- i. Exercise of Option. Beginning at the end of the sixth (6th) Contract Year, so long as Purchaser is not in default under this Agreement or any Project Contract, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment set forth in the Project Contract applicable as of the date of the transfer of title to the System. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. Fair Market Value. The “**Fair Market Value**” of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, 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. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will 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.
- iii. Title Transfer; Warranties; Manuals. Seller shall transfer good title to the System to Purchaser upon Seller’s receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold “as is, where is, with all faults.” Seller will assign to Purchaser any manufacturer’s warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller’s possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser’s reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 22(d), Seller will have no further liabilities or obligations hereunder for the System.

**18. Indemnification and Limitations of Liability.**

- a. Indemnification of Purchaser by Seller. Seller shall protect and defend, at its own expense, Purchaser and their officers, employees, agents and independent contractors from any legal action including attorneys’ fees or other proceeding based upon such act, omission, breach or as otherwise required by this Section. Seller shall defend, indemnify and hold harmless Purchaser and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from the following:
  - i. (1) death or bodily injury to third-parties; (2) damage or injury to, loss (including theft), or loss of use of, any property of third-parties; arising from or related to Seller’s negligence or the negligence of any person, firm or corporation employed by Seller, either directly or by independent contract, except for liability resulting from the sole or active negligence or the willful misconduct of Purchaser.
  - ii. Any dispute between Seller and Seller’ subcontractors/ supplies/ sureties, including, but not limited to, any failure or alleged failure of the Seller (or any person hired or employed directly or indirectly by the Seller) to pay any subcontractor or materialman of any tier or any other person employed in connection with Seller’s conduct arising from or related to and/or filing of any stop notice or mechanic’s lien claims.
  - iii. Seller, at its own expense, cost, and risk, shall, at its option, either defend (with counsel of Seller’s selection, subject to approval and acceptance by Purchaser, which acceptance and approval shall not unreasonably be withheld) any and all claims, actions, suits, or other proceedings that may be brought or instituted against Purchaser, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified in this Section, or reimburse Purchaser for all actual and reasonable expenses of such defense.
- b. Indemnification of Seller by Purchaser. To the furthest extent permitted by California law, Purchaser shall defend, indemnify, and hold harmless Seller, agents, representatives, officers, consultants and employees from any and all (i) third party claims of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage arising out of, connected with, or resulting from the negligence or willful misconduct of Purchaser and (ii) breach of any representation or warranty set

forth in Section 15.

- c. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “Claim”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- d. **Environmental Indemnification.**
- i. **Seller Indemnity.** Seller shall indemnify, defend, and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below, or near the Premises of any Hazardous Substance to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents, or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend, and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below, or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents, or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill, or release of any Hazardous Substance.
- e. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in the applicable Project Contract shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 18(d).
- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES, IN COMBINATION WITH ANY REMEDIES PROVIDED UNDER THE EASEMENT, ARE THE AFFECTED PARTY’S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**19. Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller’s rights, entitlement, obligations, or costs under this Agreement or a Project Contract, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement or Project Contract as are reasonably necessary to preserve the economic value of this Agreement or Project Contract to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate the applicable Project Contract and remove the System and restore the Premises in accordance with Section 11 without either Party having further liability under this Agreement or Project Contract except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement or a Project Contract, or Seller’s performance of this Agreement or a Project Contract, either illegal or impossible, then Seller may terminate the applicable Project Contract immediately upon notice to Purchaser without either Party having further liability under this Agreement or applicable Project Contract except with respect to liabilities accrued prior to the date of termination; provided, however, that if such Change in Law is the result of any application or action of Purchaser, then Purchaser shall be

liable to pay Seller the applicable amount listed in the Termination Payment schedule.

**20. Assignment and Financing.**

**a. Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 20(a), Seller may assign this Agreement or any Project Contract to another entity by providing prior notice of such assignment to Purchaser. Subject to the remainder of this Section 20(a), this Agreement or any Project Contract may not be assigned in whole or in part by Purchaser without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed.
  - ii. **Permitted Assignments.** Notwithstanding Section 20(a)(i):
    1. Seller may, without the prior written notice to Purchaser, assign, mortgage, pledge, or otherwise directly or indirectly assign its interests in this Agreement or a Project Contract to (A) any Financing Party (as defined in Section 20(b)),  
(B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any Affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
    2. Purchaser may, by providing prior notice to Seller, assign this Agreement:
      - a. to a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness; and
      - b. to an assignee that has an Investment Grade credit rating at the time of the assignment.
  - iii. **Successors and Permitted Assignees.** This Agreement and the Project Contracts are binding on and inure to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors, or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment, and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment, or amendments do not alter the fundamental economic terms of this Agreement or a Project Contract.
- c. Termination Requires Consent.** Seller and Purchaser agree that any right of Purchaser to terminate this Agreement or a Project Contract is subject to the prior written consent of any Financing Party.

**21. Confidentiality.**

- a. Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement (or a Project Contract) or negotiating this Agreement (or a Project Contract) a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement or a Project Contract.
- i. Confidential Information shall include only that information which is specifically marked "Confidential" and which would relate to matters protected as intellectual property under applicable law, including information defined as a "Trade Secret" under the California Uniform Trade Secrets Act, Civil Code sections 3426, et seq., as they may exist from time to time. Confidential Information shall exclude information falling into any of the following categories:

- (1) Information that, at the time of disclosure, is in the public domain, other than information that entered the public domain by breach of the Agreement or any other agreement, or in violation of any Applicable Law;
- (2) Information that, after disclosure, enters the public domain, other than information that entered the public domain by breach of the Agreement or any other agreement, or in violation of any Applicable Law;
- (3) Information, other than that obtained from third parties, that prior to disclosure, was already in the recipient's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;
- (4) Information obtained by the recipient from a third party having an independent right to disclose the information;
- (5) Information that is obtained through independent research without use of or access to the Confidential Information; or
- (6) A public record as defined under the California Public Records Act, Government Code sections 6250, et seq.

**b. Permitted Disclosures.** Notwithstanding Section 21(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants, and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement or a Project Contract if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement or a Project Contract, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

**c. Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option), except for copies pursuant to an electronic retention occurring naturally as part of routine back up of information storage systems of the receiving Party, after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

**d. Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

**22. General Provisions.**

**a. Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole (including Project Contracts) and not to any particular section or subsection of this Agreement

or a Project Contract , (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement or a Project Contract are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement or Project Contract, “dollar” and the “\$” sign refer to United States dollars.

- b. **Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement or a Project Contract without giving effect to the conflicts of law principles thereof.
- c. **Notices.** All notices under this Agreement or a Project Contract shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement or Project Contract that should reasonably be considered to survive termination of this Agreement or Project Contract, including, without limitation, provisions related to billing and payment and indemnification, will survive termination of this Agreement or a Project Contract.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement or Project Contract and to carry out the intent of this Agreement or Project Contract.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement or a Project Contract may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement or a Project Contract. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement or a Project Contract in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement and applicable Project Contracts without further liability under this Agreement or Project Contract except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 11 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement and the Project Contracts to be “service contracts” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of System Output from the System.
- i. **No Partnership.** No provision of this Agreement or Project Contracts may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement and the Project Contracts constitute the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement and the Project Contracts may be modified only by a writing signed by both Parties. If any provision of this Agreement or Project Contract is found unenforceable or invalid, such provision shall not be read to render this Agreement or Project Contract unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transactions contemplated hereunder constitutes “forward contracts” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.



- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

Purchaser: Rescue Union School District

Seller: [SPE]

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

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

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

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

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

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

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

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

## APPENDIX A

### **Project Contract – Green Valley Elementary School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - a. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - b. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - c. Roof membrane maintenance or reroofing work.
  - d. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$1,220,196.63
2	\$1,073,449.22
3	\$968,730.38
4	\$867,530.27
5	\$766,996.69
6	\$668,781.16
7	\$645,509.76
8	\$622,549.76
9	\$598,868.75
10	\$574,432.91
11	\$549,206.83
12	\$523,153.46
13	\$496,234.04
14	\$467,764.46
15	\$438,313.60
16	\$407,835.36
17	\$376,281.52
18	\$343,601.58
19	\$309,742.65

20	\$274,649.37
21	\$238,263.76
22	\$200,525.09
23	\$161,369.79
24	\$120,731.26
25	\$78,539.76

10. **System Location:** 2380 Bass Lake Road, Rescue, CA 95672

11. **System Size (DC kW):** 183.86

12. **System Description (Ground mount, rooftop, car port, etc.):** Carport

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System ("Delivery Point"):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

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

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

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



## APPENDIX A

### **Project Contract – Rescue Elementary School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - e. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - f. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - g. Roof membrane maintenance or reroofing work.
  - h. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$970,962.36
2	\$853,601.43
3	\$770,072.47
4	\$690,241.61
5	\$614,377.55
6	\$538,022.55
7	\$519,425.55
8	\$501,090.56
9	\$482,196.27
10	\$462,716.92
11	\$442,625.56
12	\$421,894.01
13	\$400,492.80
14	\$377,802.39
15	\$354,349.80
16	\$330,099.81
17	\$305,015.57



18	\$279,058.55
19	\$252,188.38
20	\$224,362.85
21	\$195,537.76
22	\$165,666.86
23	\$134,701.73
24	\$102,591.70
25	\$69,283.71

10. **System Location:** 3880 Green Valley Road, Rescue, CA 95672

11. **System Size (DC kW):** 168.20

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System (“Delivery Point”):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

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

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

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

## APPENDIX A

### **Project Contract – Pleasant Grove Middle School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - i. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - j. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - k. Roof membrane maintenance or reroofing work.
  - l. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$2,825,953.64
2	\$2,483,584.38
3	\$2,240,182.31
4	\$2,004,988.92
5	\$1,771,390.37
6	\$1,536,526.64
7	\$1,479,292.28
8	\$1,423,187.24
9	\$1,365,391.82
10	\$1,305,828.78
11	\$1,244,417.35
12	\$1,181,073.09
13	\$1,115,707.71
14	\$1,046,331.83
15	\$974,651.08

16	\$900,559.74
17	\$823,947.20
18	\$744,697.76
19	\$665,855.90
20	\$585,006.36
21	\$501,283.34
22	\$414,554.77
23	\$324,682.43
24	\$231,521.66
25	\$134,921.07

10. **System Location:** 2540 Green Valley Road, Rescue, 95672

11. **System Size (DC kW):** 516.20

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System ("Delivery Point"):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

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

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

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

## APPENDIX A

### **Project Contract – Lake Forest Elementary School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - m. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - n. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - o. Roof membrane maintenance or reroofing work.
  - p. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$948,798.35
2	\$831,320.83
3	\$747,917.86
4	\$669,298.67
5	\$593,631.89
6	\$517,496.96
7	\$499,586.54
8	\$481,969.38
9	\$463,819.39
10	\$445,112.15
11	\$425,822.14
12	\$405,922.64
13	\$385,385.73
14	\$363,597.57

15	\$341,083.02
16	\$317,808.67
17	\$293,739.58
18	\$268,839.17
19	\$243,069.19
20	\$216,389.60
21	\$188,758.49
22	\$160,132.03
23	\$130,464.33
24	\$99,707.37
25	\$67,810.87

10. **System Location:** 2240 Sailsbury Drive, El Dorado Hills, CA 95762

11. **System Size (DC kW):** 167.04

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System ("Delivery Point"):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

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

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

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

## APPENDIX A

### Project Contract – Jackson Elementary School

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - q. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - r. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - s. Roof membrane maintenance or reroofing work.
  - t. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$984,297.55
2	\$865,150.19
3	\$780,399.86
4	\$698,940.78
5	\$621,972.34
6	\$544,508.85
7	\$525,644.38
8	\$507,049.20
9	\$487,890.35
10	\$468,141.96
11	\$447,777.00
12	\$426,767.19



13	\$405,082.95
14	\$382,080.16
15	\$358,309.00
16	\$333,734.11
17	\$308,318.48
18	\$282,023.39
19	\$254,808.34
20	\$226,630.91
21	\$197,446.77
22	\$167,209.46
23	\$135,870.42
24	\$103,378.76
25	\$69,681.27

10. **System Location:** 2561 Francisco Drive, El Dorado Hills, CA 95762

11. **System Size (DC kW):** 175.20

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System ("Delivery Point"):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## APPENDIX A

### **Project Contract – Marina Village Middle School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - u. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - v. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - w. Roof membrane maintenance or reroofing work.
  - x. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).

Notwithstanding anything herein or in the Master Solar Power Purchase Agreement the Contract Price excludes and the Purchaser shall be responsible for all ADA compliance requirements.

### 9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$1,743,594.89
2	\$1,533,736.12
3	\$1,383,964.01
4	\$1,239,228.13
5	\$1,095,446.71
6	\$950,853.16
7	\$915,786.20

8	\$881,378.46
9	\$845,887.71
10	\$809,263.06
11	\$771,451.26
12	\$732,396.58
13	\$693,808.58
14	\$653,169.58
15	\$611,126.92
16	\$567,614.64
17	\$522,563.62
18	\$475,901.55
19	\$427,552.67
20	\$377,437.67
21	\$325,473.48
22	\$271,573.14
23	\$215,645.53
24	\$157,595.25
25	\$97,322.37

10. **System Location:** 1901 Francisco Drive, El Dorado Hills, CA 95762

11. **System Size (DC kW):** 259.26

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises.** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System (“Delivery Point”):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

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

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

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

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

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

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

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

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

Project Company: [if different from Seller]

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

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

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

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

## APPENDIX A

### **Project Contract – Lakeview Elementary School**

1. **Master Agreement Applies.** The Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ], is incorporated into this Project Contract. This Project Contract is intended to identify the specific System, Contract Price, Termination Payment, and other matters unique to the System.
2. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
3. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
4. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.
5. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
6. **Net Metering Benefits:** Accrue to Purchaser.
7. **Contract Price:** \$0.1919 / kWh This Contract Price has been negotiated by the Parties as a fixed price across the several Systems described in the Contract based upon an aggregate cost and benefit of the overall Agreement. Neither Party shall be entitled to any later adjustment of this Contract Price based on perceived differences across the Systems.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

The Contract Price includes an allowance of \$50,000 for removal of asbestos anticipated at the Site. In any event the actual cost to Seller exceeds that sum, the Parties shall negotiate in good faith allocation of additional costs between them, with any contribution from Purchaser being incorporated into the Contract Price or paid in a liquidated sum.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
  - y. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - z. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - aa. Roof membrane maintenance or reroofing work.
  - bb. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
9. **Termination Payment Schedule**

Contract Year	Termination Payment (\$)
1	\$1,270,661.75
2	\$1,117,639.95
3	\$1,008,485.80

4	\$903,002.57
5	\$798,217.07
6	\$694,439.95
7	\$670,205.08
8	\$646,298.20
9	\$621,643.23
10	\$596,205.17
11	\$569,947.36
12	\$542,831.46
13	\$514,817.33
14	\$485,180.89
15	\$454,526.16
16	\$422,805.41
17	\$389,968.70
18	\$355,963.73
19	\$320,735.73
20	\$284,227.38
21	\$246,378.64
22	\$207,126.66
23	\$166,405.61
24	\$124,146.56
25	\$80,277.30

10. **System Location:** 3371 Brittany Way, El Dorado Hills, CA 95762

11. **System Size (DC kW):** 194.88

12. **System Description (Ground mount, rooftop, car port, etc.):** Car port

13. **System Description:** [To be finalized]

14. **Host Utility:** Pacific Gas and Electric Company

15. **Delivery Point and Premises:** [To be finalized]

a. Premises, including the Improvements:

b. Proposed System location:

c. Delivery Point for electricity generated by the System (“Delivery Point”):

d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs, etc.):

e. Construction assumptions (if any):

16. **Counterparts.** The Parties agree that this Project Contract may be executed in PDF counterparts and that, when taken together, such counterparts constitute but one agreement.

17. **Representation and Warranty.** The signatories to this Project Company represent and warrant that they either (i) executed the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ] or (ii) are an Affiliate of one of the signatories to the Solar Power Purchase Master Agreement, signed between [ ] and [ ] and dated [ ]. The signatories to this Project Company further represent and warrant that they have full authority to enter into this Project Company.

Purchaser: [Purchaser Name]

Seller: [SPE]

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Project Company: [if different from Seller]

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## APPENDIX B

### Expected System Output – Green Valley Elementary School

<b>Contract Year</b>	<b>Output kWh</b>
1	274,531
2	272,609
3	270,701
4	268,806
5	266,924
6	265,056
7	263,201
8	261,358
9	259,529
10	257,712
11	255,908
12	254,117
13	252,338
14	250,571
15	248,817
16	247,076
17	245,346
18	243,629
19	241,923
20	240,230
21	238,548
22	236,878
23	235,220
24	233,574
25	231,939

## APPENDIX B

### Expected System Output – Rescue Elementary School

Contract Year	Output kWh
1	270,739
2	268,844
3	266,962
4	265,093
5	263,238
6	261,395
7	259,565
8	257,748
9	255,944
10	254,152
11	252,373
12	250,607
13	248,852
14	247,110
15	245,381
16	243,663
17	241,957
18	240,264
19	238,582
20	236,912
21	235,253
22	233,607
23	231,971
24	230,348
25	228,735

## APPENDIX B

### Expected System Output – Pleasant Grove Middle School

Contract Year	Output kWh
1	796,694
2	791,117
3	785,579
4	780,080
5	774,620
6	769,197
7	763,813
8	758,466
9	753,157
10	747,885
11	742,650
12	737,451
13	732,289
14	727,163
15	722,073
16	717,018
17	711,999
18	707,015
19	702,066
20	697,152
21	692,272
22	687,426
23	682,614
24	677,835
25	673,091

## APPENDIX B

### Expected System Output – Lake Forest Elementary School

Contract Year	Output kWh
1	248,748
2	247,007
3	245,278
4	243,561
5	241,856
6	240,163
7	238,482
8	236,812
9	235,155
10	233,509
11	231,874
12	230,251
13	228,639
14	227,039
15	225,449
16	223,871
17	222,304
18	220,748
19	219,203
20	217,668
21	216,145
22	214,632
23	213,129
24	211,637
25	210,156

## APPENDIX B

### Expected System Output – Jackson Elementary School

Contract Year	Output kWh
1	275,381
2	273,453
3	271,539
4	269,638
5	267,751
6	265,877
7	264,016
8	262,167
9	260,332
10	258,510
11	256,700
12	254,903
13	253,119
14	251,347
15	249,588
16	247,841
17	246,106
18	244,383
19	242,672
20	240,974
21	239,287
22	237,612
23	235,949
24	234,297
25	232,657

**APPENDIX B****Expected System Output – Marina Village School**

<b>Contract Year</b>	<b>Output kWh</b>
1	393,222
2	390,469
3	387,736
4	385,022
5	382,327
6	379,651
7	376,993
8	374,354
9	371,734
10	369,131
11	366,548
12	363,982
13	361,434
14	358,904
15	356,391
16	353,897
17	351,419
18	348,960
19	346,517
20	344,091
21	341,683
22	339,291
23	336,916
24	334,557
25	332,215



## APPENDIX B

### Expected System Output – Lakeview Elementary School

Contract Year	Output kWh
1	285,500
2	283,502
3	281,517
4	279,546
5	277,590
6	275,646
7	273,717
8	271,801
9	269,898
10	268,009
11	266,133
12	264,270
13	262,420
14	260,583
15	258,759
16	256,948
17	255,149
18	253,363
19	251,590
20	249,828
21	248,080
22	246,343
23	244,619
24	242,906
25	241,206

Appendix C

Easement

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

Assessor's Parcel No.: \_\_\_\_\_

Space Above This Line for Recorder's Use

**EASEMENT FOR SOLAR ENERGY GENERATION**

The undersigned grantors declare:

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_

\_\_\_\_\_  
Signature of Declarant or Agent determining tax — Firm Name

\_\_\_ Computed on the consideration or value of property conveyed; OR

\_\_\_ Computed on the consideration or value less liens or encumbrances remaining at time of sale.

This Easement for Solar Energy Generation (this "Easement") is made and entered into as of the day \_\_\_\_\_ of \_\_\_\_\_, 2023 (the "Effective Date") by and between **Rescue Union School District**, an \_\_\_\_\_ ("Grantor"), and \_\_\_\_\_, a Delaware limited liability company ("Grantee"). Each of Grantor and Grantee are sometimes referred to as a "Party" and collectively as the "Parties."

**WITNESSETH:**

This Easement is made with reference to the following facts:

WHEREAS, Grantor is the owner of certain real property located at \_\_\_\_\_ CA (the "Property"), and is herein granting an easement over a portion of the Property as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Easement Area"); and

WHEREAS, Grantor desires to grant an easement to Grantee for the purpose of (i) evaluating the

suitability of the Easement Area for solar energy production, including, conducting environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests and planning activities, together with any and all activities ancillary thereto, including pedestrian and vehicular traffic; (ii) the generation, distribution, and sale of electricity by Grantee to Grantor derived from solar energy devices constructed, installed and operated by Grantee on the Easement Area; and (iii) constructing, installing, using, replacing, relocating, removing, maintaining and operating, solar energy generating and storage equipment, overhead and/or underground electrical transmission and communications lines, electric transformers, breakers, , telecommunications equipment, power generation facilities, a line or lines of poles or towers with wires and cables, and/or underground wires and cables, together with any and all activities ancillary thereto, including pedestrian and vehicular traffic, as necessary and contemplated by that certain Solar Power Purchase Master Agreement between the Parties and of even date herewith (the "Power Purchase Agreement") this easement relates to the Project being constructed at [school] (the "School") pursuant to the Project Contract, Appendix A of the Power Purchase Agreement (the "Project Contract") (all of the foregoing is hereinafter collectively referred to as the "Project").

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Grant of Easement.** Grantor grants and conveys an exclusive easement to Grantee, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, on, over, under and across the Easement Area, for the purpose of constructing, installing, operating, repairing, maintaining, altering, replacing, improving, restoring and removing the Project for the Term (as defined herein). Grantor hereby grants and conveys to Grantee an exclusive easement on, over and across the Property for the following: the open and unobstructed access of the sun to the Project and to ensure adequate exposure of the Project to the sun. Except for currently existing buildings, trees and other existing fixtures (the "Pre-Existing Fixtures"). Grantor will not materially interfere nor, to the extent Grantor may reasonably control, allow material interference with the solar speed or solar direction over the Project or otherwise engage in activities or allow any activities which might impede or decrease the output or efficiency of the Project. Except for the Pre-Existing Fixtures, Grantor hereby grants and conveys to Grantee an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "Solar Easement") throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Project infrastructure is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property.

**2. Term of Easement; Termination.**

(a) *Term.* The term of this Easement (the "Initial Term") shall be for twenty-five (25) years, with an option for Grantor to renew for three (3) additional terms of five (5) years. Notwithstanding the foregoing, this Easement shall terminate one year following the cessation of the sale of electricity to the Grantor at the School or other owner of the Property or the Termination of the Project Contract under the Power Purchase Agreement for the School.

(b) *Termination.* Notwithstanding anything else in this Easement, Grantee may terminate this Easement at any time effective upon the expiration of a period of ninety (90) days after written notice from Grantee to Grantor.

(c) *Grantee's Removal of Equipment and other Improvements.* After termination of this Easement, Grantee shall reenter the Easement Area for such period of time as shall be reasonably necessary for Grantee to remove any equipment, structures or other improvements or personal property of any kind whatsoever which Grantee

placed on the Easement Area, such time to not extend beyond one year following termination of the Power Purchase Agreement (the “Removal Term”, collectively with Initial Term and any renewals, the “Term”).

**3. Ingress and Egress.** Grantor also grants to Grantee, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, a non-exclusive easement on, over and across the Property, for vehicular and pedestrian ingress from the public right of way to all portions of the Easement Area and egress to the public right of way from all portions of the Easement Area by Grantee, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, for the Term. Grantee agrees not to unreasonably interfere with Grantor's activities on the Easement Area. Grantor further grants a non-exclusive license to the Property for vehicular and pedestrian ingress from the public right of way to all portions of the Property or the Easement Area.

**4. Construction.** Grantee may, upon providing reasonable notice to Grantor, construct and install on the Easement Area the Project and related improvements, including, but not limited to: carports, foundations, concrete pads and/or footings; support fixtures, anchors and fences; monuments and markers; and energy generation and storage facilities.

**5. Government Permits.** Grantor shall reasonably cooperate with Grantee in obtaining any necessary permits, approvals, consents and easements from any governmental agencies or other third parties having jurisdiction over and/or rights with respect to the Easement Area, the design, construction, location or operation of any equipment or any activities associated therewith.

**6. Ownership.** Grantee shall own any improvements or equipment associated with the Project, including any modules and panels, and the carport. Grantor shall have no ownership interest in, or other rights of any nature with respect to, the equipment or facilities constructed and installed by Grantee in connection with the Project. Any and all energy tax credits or other tax credits accruing to the owner of solar energy devices such as those described herein shall belong solely to Grantee, and Grantor shall have no claim or rights in connection with any such tax credits except as may be set forth in another agreement between Grantor and Grantee.

**7. Maintenance.** Grantee shall operate and maintain in good order and repair throughout the Term, subject to Grantee's right to removal, any equipment and facilities owned or operated by Grantee in connection with the Project, including, but not limited to, all Project related facilities, in accordance with any applicable regulatory requirements, as further specified in the Power Purchase Agreement.

**8. Continued Use of Easement Area.** Grantee shall have the sole and exclusive right to conduct solar energy development activities on the Property during the Initial Term and renewal term, if any.

**9. Taxes.** Grantee shall be responsible for any personal property taxes levied against the Project and any equipment installed by Grantee on the Easement Area. Grantor shall pay the real property taxes for the Easement Area before such taxes become delinquent. If Grantor fails to pay the taxes or any other monetary obligations for which it is responsible hereunder, or otherwise defaults under this Easement, then, in addition to its other rights and remedies, Grantee shall have the right to pay such taxes and other obligations, and/or cure any such default by any appropriate means; and the cost thereof shall be reimbursed to Grantee by Grantor within thirty (30) days of Grantee's demand. Grantee may offset such cost against any amounts owed by it to Grantor.

**10. Environmental Matters.** Grantee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations (“Hazardous Materials”), or any federal, state or local environmental laws, regulations, ordinances, rules and directives,

common law or equity, or any other laws pertaining to the environmental condition of the Easement Area. Grantee shall reimburse, hold harmless and indemnify Grantor for, from and against any such breach of its obligation under this Section to the extent that such (a) is caused by Grantee or otherwise directly results from the Project or Grantee's use of the Easement Area and (b) is not due to Grantor's actions or omissions. Grantee shall promptly notify Grantor of any such violation and shall promptly take all actions, at its sole expense, as are necessary to clean the Easement Area and any other affected areas to the extent that an applicable governmental agency requires such clean-up. Notwithstanding the foregoing, Grantee shall have no liability or responsibility with respect to Hazardous Materials to the extent that such exist on the Easement Area prior to the Effective Date. This provision shall survive termination of this Easement with respect to obligations then accrued. Notwithstanding the foregoing, Grantor shall be responsible for any and all costs, claims, losses, expenses, liabilities, damages, penalties and causes of action arising under any federal, state or local environmental laws, regulations, ordinances, rules and directives, common law or equity, or any other laws pertaining to the environmental condition of the Easement Area during the Term to the extent Grantee caused such environmental condition or it existed as of the Effective Date.

**11. Title to Property.** To Grantor's knowledge, Grantor represents to Grantee that: (i) Grantor is the sole owner of the Easement Area and holds marketable fee simple title to the Easement Area; (ii) Grantor has not leased, transferred or otherwise encumbered in any way the Easement Area, except as may be disclosed on Schedule A hereto or as may be shown in a physical inspection, ALTA survey or a policy commitment for title insurance (the "Permitted Encumbrances"); (iii) Grantor has not received notice from any third party of any claim with respect to the Easement Area; (iv) Grantor and each person signing this Easement on behalf of Grantor has the full and unrestricted power and authority to execute and deliver this Easement and grant this Easement and the rights herein granted; and (v) Grantor is not the subject of any bankruptcy, insolvency or probate proceeding.

**12. Liens and Tenants.** Grantor represents that there are no liens, encumbrances, leases, fractional interests, mineral or oil and gas rights or other exceptions to Grantor's fee simple title or otherwise burdening the estate of Grantor in the Easement Area, except Permitted Encumbrances, and Grantor agrees not to create or permit the creation of any such lien or encumbrance without Grantee's prior written consent, which shall not be unreasonably withheld or delayed. Grantor agrees to remove, discharge or bond over any such lien or other encumbrance created without Grantee's prior written consent within thirty (30) days of receiving notice of such encumbrance.

**13. No Interference.** Grantee shall have the quiet use and enjoyment of the Easement Area in accordance with the terms of this Easement without any suit, trouble or unreasonable interference by Grantor, and Grantor's activities and any grant of rights Grantor has made or makes to any person or entity shall not unreasonably interfere with Grantee's intended use of the Easement Area and Grantee's activities in constructing, operating, and maintaining the Project.

**14. No Obligation to Develop.** Nothing in this Easement shall be construed as requiring Grantee to undertake, construct or develop any portion of the Project.

**15. Condemnation and Casualty.**

(a) *Condemnation.* If any portion of the Property or Easement Area is taken under the power of eminent domain, or sold by Grantor under the threat of the exercise of said power (the act of which is herein referred to as "Condemnation"), this Easement shall terminate as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Property or Easement Area (the "Condemnation Date"). If the entire Easement Area is condemned, then this Easement shall automatically terminate as of the Condemnation Date. The Party who receives the condemnor's notice of intention to take shall immediately give a copy of such notice to the other Party. If, as a result of any Condemnation, the Property or Easement Area, or any portion thereof, is no longer reasonably suited for the Project in Grantee's reasonable business judgment, then Grantee may terminate this Easement (and the Power

Purchase Agreement or similar agreement between the Parties and the Grantor shall make the "Termination Payment" for such "Contract Year", as both terms in quotations are defined in the Power Purchase Agreement) by giving Grantor thirty (30) days written notice. If this Easement is not terminated as a result of a Condemnation, it shall remain in full force and effect as to the portion of the Property or Easement Area remaining. Grantee shall be entitled to its allocable share of any portion of the Condemnation award attributable to the Project, taking into consideration, among other factors, any amounts paid by Grantee with respect to the Project.

(b) *Casualty.* For the purposes of this Easement, "Casualty" shall mean a loss, damage, or destruction of by fire, earthquake, storm, tornado, or other unexpected or unusual natural event not attributable to normal and reasonable wear and tear. In the event the Project shall be damaged or destroyed by a Casualty, Grantee shall, within the earlier of (a) sixty (60) days of the date of such damage or (b) such later date as the Easement Area is in suitable and safe condition as a work site if it has been likewise damaged or destroyed, commence to repair or reconstruct the Project and diligently prosecute such repairs or reconstructions to completion. In case any damage or destruction occurs during the last seven (7) years of the Term or if the damage is to the extent of thirty percent (30%) or more of the insurable assets, Grantee, at its option to be evidenced by notice in writing given to Grantor within thirty (30) days after the occurrence of such damage or destruction, may elect to terminate this Easement (and the Power Purchase Agreement or similar agreement between the Parties and the Grantor shall make the "Termination Payment" for such "Contract Year", as both terms in quotations are defined in the Power Purchase Agreement) as of the date of said damage or destruction. If Grantee elects to terminate, then Grantee shall remove all debris and restore the Easement Area to the condition to which it existed prior to the commencement of the Easement, normal wear and tear excepted. Subject to receipt of sufficient insurance proceeds and delays due to any cause beyond the reasonable control of Grantee, Grantee shall commence to restore the Easement Area to substantially the same condition that existed immediately prior to the Casualty, except for modifications required by applicable laws, and excluding the repair, restoration or replacement of the fixtures, equipment, or alterations made by Grantor. Notwithstanding the foregoing, Grantee may terminate this Easement (and the Power Purchase Agreement or similar agreement between the Parties and the Grantor shall make the "Termination Payment" for such "Contract Year", as both terms in quotations are defined in the Power Purchase Agreement) if (i) the Easement Area is damaged by a Casualty during the last year of the Term, (ii) in the event that Grantee reasonably determines in good faith that the Casualty is of such magnitude that reconstruction is impracticable, (iii) if the loss is not covered by Grantee's insurance, or (iv) if the holder of any security instrument or agreement requires that the insurance proceeds be applied to the payment of the debt. In such case, Grantee must give Grantor as much prior notice in writing as is commercially practicable under the circumstances, following which termination, Grantee shall remove all debris and restore the Easement Area to the condition to which it existed prior to the commencement of the Easement, normal wear and tear excepted. The Parties agree that the terms of this Article shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law.

## **16. Subordination, Non-disturbance, and Estoppel.**

(a) *Subordination.* Subject to Grantee's receipt of a non-disturbance agreement from the applicable holder of a Security Interest (as defined below) as provided in Section 16(b) below, all rights and interests of Grantee hereunder and all rights and interests of the holder (in each case a "Lender") of any mortgage, lien, collateralization, financial interest, or other security interest, whether first priority, purchase money, or other, (a "Security Interest") are and shall be and remain subject and subordinate to all mortgages, trust deeds, ground leases, or security instruments (each of which shall be referred to herein as a "Security Instrument"), heretofore or hereafter given and encumbering the Property, or any part thereof, and to all renewals, modifications, consolidations, replacements, and extensions of any such Security Instrument, provided that the same shall include customary non-disturbance provisions. If the holder of a Security Instrument or any Person agreeing to



make a loan secured by a Security Instrument on the Property shall require confirmation of any subordination for which provision is herein made or a separate subordination agreement with respect to any transaction, Grantee shall execute such confirmation or subordination agreement in a form reasonably acceptable to Grantee, Grantor and any holder of any Security Instrument. In the event any proceedings are brought for foreclosure of, or in the event of the exercise of any power of sale under, any Security Instrument, Grantee shall attorn to the Security Instrument holder or purchaser upon any such foreclosure or sale and recognize such holder or purchaser as Grantor under this Easement.

(b) *Non-disturbance.* If Grantor shall mortgage or has mortgaged the Easement Area, Grantor shall obtain for Grantee a Subordination, Non-disturbance, and Attornment Agreement in a commercially reasonable form, which agreement shall provide that, during the Term and so long as this Easement is in effect, and there is no event of default by Grantee hereunder, and notwithstanding any foreclosure under the Security Instrument or deed in lieu of foreclosure, Grantee's rights to peaceful occupation and possession of the Easement Area in accordance with the provisions of this Easement, and all of Grantee's rights and privileges in this Easement, shall not be disturbed during the Term. It shall also acknowledge that the Project is not a fixture of the Premises and is in no way secured by any Security Interest or other interest in the Property.

(c) *Estoppel Certificates.* Either Party shall provide to the other, within ten (10) business days of written request from the requesting Party, an estoppel certificate in form reasonably satisfactory to the requesting Party certifying that this Easement is unmodified and in full force and effect or that this Easement is in full force and effect as modified, with the modifications being stated. Such estoppel certificates shall also state (a) that the Party requesting the estoppel certificate is not in default under the Easement, or if such Party is in default, the specific nature of such default, and (b) any other factual matters as may be reasonably requested by the requesting Party. Grantor's lenders and prospective purchasers of the Property, and Grantee's lenders, and their respective successors and assigns, shall be entitled to reasonably rely upon such estoppel certificates.

**17. Grantee Financing.** Grantor acknowledges that Grantee may be financing all or a part of the construction of the Project with a lender (the "Lender"). Neither Grantor's rights under this Easement nor its Lender's rights in the Easement may be subordinated to a mortgage or other lien or encumbrance created by Grantee.

(a) Grantee may assign and transfer as security to any Lender all of the interest, rights and remedies of Grantee in, to and with respect to this Easement or with respect to the Project. Such security may be the granting of a Security Interest in the Project that will be perfected by a filing under the Uniform Commercial Code as adopted in the State of California. Grantor consents to such filings. Grantor shall place its successors and assigns on notice of the ownership of the Project by Grantee, and the fact that the Project is not part of the Property or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(b) Grantor shall, at no cost to Grantor, provide all reasonable assistance to Grantee to help Grantee consummate financing of the Project by any Lender. Grantor shall use commercially reasonable efforts to obtain any lien waivers, execution of commercial law forms and other documents (including customary consents and estoppels) as reasonably needed by Grantee or any Lender to secure such Lender's collateral position in the Project or in Grantee's rights under this Easement.

(c) Grantee may authorize and empower the Lender to assert, either directly or on behalf of the assigning party, any claims that Grantee may have against Grantor under this Easement and make, constitute, and appoint the Lender as the true and lawful attorney and agent-in-fact of Grantee for the purpose of enabling the Lender to assert and collect such claims.

(d) Grantor agrees that any Lender will have the right to make any payment and to do any other act or thing required to be performed by Grantee under this Easement, and the foregoing will be effective to prevent a breach or event of default and any forfeiture of any rights under this Easement. Grantor agrees to deliver to

Lender all notices for an event of default that is delivered to Grantee provided that Lender's notice information has been given to Grantor. Grantor shall not exercise any termination right arising from Grantee's breach or default under this Easement unless each Lender has been given notice and the Lender Cure Period (defined below) has expired. Grantor's notice must specify the condition giving rise to the event of default or breach. Lender has the cure period allowed under this Easement to cure the condition plus an additional sixty (60) days ("Lender Cure Period"). The Parties' obligations under this Easement shall otherwise remain in effect, and the Parties shall fully perform all of their obligations under this Easement during any Lender Cure Period. If Grantor notifies a Lender that it will terminate this Easement, Grantor will not terminate this Easement until permitting Lender a reasonable period necessary for Lender to foreclose Grantee's interest under this Easement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee hereunder that can be reasonably performed by Lender. The time within which Lender must foreclose will be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any receivership, bankruptcy or insolvency laws from commencing or prosecuting the necessary foreclosure. Upon any acquisition of Grantee's rights by a Lender or an operator designated pursuant to the provisions of any Grantee financing agreement, Grantor shall accept such Lender or designated operator in place of Grantee for all purposes under or in connection with this Easement for the remainder of the Term.

**18. Default.**

(a) *Default of Grantor.* Each of the following events shall constitute an event of default by Grantor and shall permit Grantee to seek specific performance or all other appropriate remedies available at law or equity: (i) the failure to pay amounts required to be paid hereunder when due, and such failure has continued for thirty (30) days after written notice to Grantor from Grantee; or (ii) the failure by Grantor to perform any other material term set forth in this Easement, and such failure has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure, if such failure cannot reasonably be cured within a thirty (30) day period) after written notice to Grantor from Grantee. Notwithstanding the foregoing, Grantor shall not be deemed to be in default if within the aforementioned thirty (30) day period Grantor demonstrated commercially reasonable efforts to cure the default.

(b) *Default of Grantee.* Each of the following events shall constitute an event of default by Grantee and shall permit Grantor to seek monetary damages or all other appropriate remedies available at law or equity: (i) the failure to pay amounts required to be paid hereunder when due, and such failure has continued for thirty (30) days after written notice to Grantee from Grantor; or (ii) the failure by Grantee to perform any other material term set forth in this Easement, and such failure has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure, if such failure cannot reasonably be cured within a thirty (30) day period) after written notice to Grantee from Grantor.

**19. Termination Payment.** The Parties agree to the extent this Easement is terminated due to a breach or default, the Power Purchase Agreement, or similar instrument shall also terminate and the Termination Payment, as defined in the Power Purchase Agreement, shall be due and payable.

**20. Successors and Assigns.** This Easement runs with the land and binds and benefits Grantor's and Grantee's successors and assigns. Grantee may assign all or any portion of its interest under this Easement to a third party without the other Party's consent.

**21. Notices.** All notices shall be provided to the parties at their respective addresses listed above by certified United States mail. Either Party may change the address to which it desires notices to be sent by giving written notice to the other party specifying the new address.

**22. Miscellaneous.** If any term or provision of this Easement shall to any extent be held invalid or unenforceable, the remaining terms and provisions shall not be affected thereby, but each term and provision of

this Easement shall be valid and enforceable to the fullest extent permitted by law. The captions of this Easement are for convenience only and are not to be construed as part of this Easement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

**23. Entire Easement; Modification.** This Easement and the Power Purchase Agreement contain the entire agreement between the Parties hereto with respect to the subject matter hereof and all previous negotiations regarding the subject matter hereof are merged herein and held for naught. Except as expressly set forth herein, this Easement may be modified only by an agreement in writing signed by Grantor and Grantee or their successors or assigns.

**24. Nonwaiver.** No waiver of performance of any covenant or agreement contained in this Easement shall be valid, binding or enforceable against the Party alleged to have waived such performance unless the same shall be in writing and executed by such Party. No such waiver shall be extended by implication, custom or practice to any situation or circumstance not expressly described therein.

**25. Governing Law.** This Easement shall be governed by, and construed and enforced in accordance with, the laws of the municipality, county, and state in which the Project is located, without regard to the state's conflict of law principles. All present and future laws, rules or regulations of any governmental agency pertaining to the generation of electricity from solar power shall be binding on the parties hereto as though incorporated herein.

**26. Counterparts.** This Easement may be executed in one or more counterparts (each of which shall be deemed an original, but all of which together shall constitute one and the same instrument) and shall be effective as of the Effective Date upon execution and delivery by the parties hereto, and such execution and delivery may be effectuated by facsimile transmission, transmission of an executed PDF copy via email, a third party electronic signature verification program or process, by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means. Signatures of the Parties transmitted by any of the foregoing methods shall be deemed to be their original signatures for all purposes and signature pages may be detached from the counterparts and attached to a single copy of this Easement to physically form one document.

**27. No Partnership.** Nothing contained in this Easement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties.

**28. Captions.** The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

**29. Further Assurances.** Each Party shall do and perform (or shall cause to be done and performed), so long as such Party does not incur monetary costs in doing so, all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either Party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Easement and the consummation of the transactions contemplated thereunder.

**IN WITNESS WHEREOF,** Grantor and Grantee have executed this Easement as of the day and year first above written.

GRANTOR

**Rescue Union School District,**

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_

\_\_\_\_\_

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

GRANTEE

\_\_\_\_\_,  
a Delaware limited liability company

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

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

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_

\_\_\_\_\_.

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Signature of Notary Public*

Drafted and prepared by:  
New Energy Equity  
2530 Riva Rd. Suite 200  
Annapolis, MD 2140

**EXHIBIT A  
EASEMENT AREA**



## **SCHEDULE A ENCUMBRANCES**