

## ENERGY SERVICES AGREEMENT

This Energy Services Agreement (the "Agreement") is made and entered into as of the 7th day of December, 2007 ("Effective Date"), by and between FAIRFIELD GROSSMONT TROLLEY LLC (the "Customer"), a Delaware limited liability company and San Diego Gas & Electric Company, a California corporation ("SDG&E"), collectively the "Parties."

### RECITALS

- A. WHEREAS, Customer owns a leasehold interest in certain real property legally described in Exhibit "A" attached hereto known as Pravada Apartments and located at the southeast corner of the intersection of Fletcher Parkway and Grossmont Center Drive, which property consists of 297 multi-family apartment units within three buildings constructed over two levels of structured parking and related amenities (collectively the, "Property"); and
- B. WHEREAS, SDG&E proposes to install at specified locations within the Property and operate an electric generation system ("Energy System") for its electric distribution system as described in more detail in the attached Exhibit "A" – Energy System Description. The Energy System will provide electric power to SDG&E's electric distribution system;
- C. WHEREAS, prior to installation of the Energy System SDG&E will verify the conditions under which the Energy System can be installed and operated on an economical basis for future electric distribution projects;
- D. WHEREAS, separate from the installation of the Energy System, SDG&E will provide electric service to the occupants of the Property at the applicable utility tariff(s) rate in accordance with the terms hereof;
- E. NOW, THEREFORE, the Parties hereto, for and upon the promises, covenants, conditions, terms and provisions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

### SECTION 1 - SCOPE OF SERVICES

1.1 Electric Service. SDG&E will provide electric service to the occupants of the Property, independently of the Energy System, according to the Tariff Rules ("Rules") approved by the California Public Utilities Commission ("CPUC") and occupants will be billed according to the applicable SDG&E schedule(s) and the Rules. No special service or discounts will be provided to the occupants of the Property by SDG&E by reason of SDG&E's installation and/or operation of the Energy System unless otherwise agreed upon by both Parties and approved by the CPUC.

1.2 License. SDG&E and Customer shall enter into the Facilities License Agreement in the form attached hereto as Exhibit "B" ("FLA"). SDG&E shall not be responsible for paying to Customer any additional rents, taxes or fees not included in the FLA. In the event the FLA is terminated in accordance with the provisions therein, then this Agreement shall terminate as of the effective date of the termination of the FLA.

1.3 Fee Owner. SDG&E acknowledges and agrees that Metropolitan Transit Development Board ("MTDB") is the current fee owner of the Property and is not a party to this Agreement. Customer's leasehold interest in the Property is pursuant to a Ground Lease dated October 11, 2006 between MTDB as the lessor and Customer as the lessee (the "Ground Lease"). This Agreement, and any and all rights of SDG&E arising under this Agreement shall be subject and subordinate to the Ground Lease and any amendments thereto. SDG&E further acknowledges and agrees that in the event of a termination of the Ground Lease for any reason, MTDB may at its option, either (i) terminate this Agreement and the License; or (ii) take over all of the right, title and interest of the Customer under this Agreement and SDG&E's rights under this Agreement and its right of possession under the License shall not be disturbed, and may require that SDG&E attorn in writing to MTDB under this Agreement and the License.

1.4 Recitals. The terms of the Recitals set forth above are fully incorporated in the terms of this Agreement.

## **SECTION 2 – PHASES AND TERMINATION OF AGREEMENT**

2.1 Design Phase. Upon the complete execution of this Agreement, the Design Phase will begin ("Design Phase") and SDG&E will commence the steps necessary for the design of its Energy System and perform those responsibilities described in section 5.4.1 below.. Customer will provide reasonable access to the Property so that SDG&E may timely complete the Design Phase, subject to SDG&E's compliance with the requirements for entry set forth in the FLA. Each party agrees to each use reasonable efforts to complete the Design Phase no later than 120 days following the Effective Date. SDG&E agrees to prepare and submit to Customer for Customer's approval, conceptual plans for the Energy System identifying the proposed location within the Property of all components of the Energy System; the approximate size, weight and energy source requirements of the Energy System; and the proposed means of attachment of the Energy System to the roof or to any other improvement located within the Property (the "Conceptual Plans"). The Conceptual Plans shall be subject to the review and approval of Customer, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that Customer approves the Conceptual Plans in writing, and further provided that the condition set forth in Sections 1.1 and 3.1 of the FLA has been satisfied+, then SDG&E will proceed to prepare final plans and specifications and working drawings consistent with the approved Conceptual Plans (the "Final Plans") and present same to Customer for its review and approval, which approval shall not be unreasonably withheld or delayed.

2.1.1 Notice to Customer. SDG&E will notify the Customer in writing when the Final Plans have been completed ("Design Completion Notice").

2.1.2 Notice of Design Acceptance. Upon receipt of the Design Completion Notice and a copy of the Final Plans, Customer will have fifteen (15) business days to review the plans and provide input to SDG&E of those changes to the plans, if any, required for Customer's approval. SDG&E shall promptly revise the Final Plans to include all changes requested by Customer which are reasonably acceptable to SDG&E and submit the revised Final Plans to Customer. Customer will provide to SDG&E a notification ("Notice of Design Acceptance") upon approving the Final Plans, or if not approved, shall notify SDG&E of its disapproval.

2.1.3 Right to Terminate. Either Party may terminate the Agreement at any time during the Design Phase for any reason upon 10 days prior written notice without fee or penalty, and each Party shall bear all costs and expenses which it has incurred during the Design Phase in connection with this Agreement.

2.2 Installation Phase. Upon SDG&E's receipt of the Notice of Design Acceptance, SDG&E will commence the actions necessary to complete the Energy System's installation ("Installation Phase"). SDG&E shall use reasonable efforts to coordinate the installation with the Customer's construction schedule and complete the installation commensurate to the completion of building commissioning and occupant move-in (assuming delivery of the Energy System is not held up due to causes beyond the reasonable control of SDG&E).

2.2.1 Right to Terminate. Either Party may terminate the Agreement at any time during the Installation Phase for any reason upon 10 days written notice, subject to the following provisions:

- a) If a breach or an event of default by Customer occurs prior to the end of the Installation Phase, or Customer requests to terminate Agreement after the delivery of the Notice of Design Acceptance for any reason other than a breach by SDG&E of this Agreement or the FLA, SDG&E shall be entitled to terminate the Agreement and charge Customer a termination fee pursuant to Section 2.4.
- b) If a breach or an event of default by SDG&E occurs during the Installation Phase, or SDG&E requests to terminate Agreement for any reason other than a breach by Customer of this Agreement or the FLA, SDG&E shall compensate Customer for reasonable documented amounts expended by Customer in support of the installation of the Energy System as of the date of termination and reasonable costs incurred to remove the Energy System.

2.2.2 Notice of Completion. SDG&E will send Customer a written notice delivered registered mail when the installation is complete and the Energy System is operational ("Commissioning Completion Notice").

## 2.3 Generation Phase

2.3.1 Generation Phase Term. Upon Customer's receipt of Commissioning Completion Notice, the Generation Phase Term shall be in effect for a term of ten (10) years commencing on date of the Commissioning Completion Notice, such initial term referred to as the "Initial Generation Phase Term." If the Initial Generation Phase Term is extended as provided herein this Section 2.3, the Initial Generation Phase Term, as the same may be extended by the First Extension Option or the Second Extension Option, shall be referred to herein as "Generation Phase Term").

2.3.2 Customer's Options at End of Initial Generation Phase Term. Upon the expiration of the Agreement's Initial Generation Phase Term, Customer shall elect one of the following options:

- a) Customer shall have the option ("First Extension Option") to continue the Generation Phase Term for an additional five (5) year term ("First Extended Term"), subject to all the terms and conditions set forth in this Agreement, exercisable by delivery of written notice to SDG&E not less than sixty (60) calendar days prior to the scheduled expiration of the Initial Generation Phase Term. Upon Customer's exercise of the First Extension Option and expiration of the First Extended Term, Customer shall have the option ("Second Extension Option") to continue the Generation Phase Term for a second five (5) year term ("Second Extended Term"), subject to all terms and conditions of the Agreement, exercisable by delivery of written notice to SDG&E not less than sixty (60) calendar days prior to the scheduled expiration of the First Extended Term..
- b) Customer shall have the option to purchase the Energy System for a negotiated price, exercisable by delivery of written notice to SDG&E not less than sixty (60) calendar days prior to the scheduled expiration of the Initial Generation Phase Term, the First Extended Term or the Second Extended Term, as applicable (each, an "Option Deadline Date"). At the request of Customer, SDG&E shall submit the price proposed by SDG&E for the Energy System and a written agreement containing such price, and all other terms and conditions of such sale ("Transfer of Ownership Agreement") within no more than 90 days following Customer's request to do so, provided such request is delivered by Customer to SDG&E not sooner than 6 months prior to expiration of the then Generation Term. Each Party may, at its election seek to further negotiate the price and Transfer of Ownership Agreement prior to the Option Deadline Date. If such price and Transfer of Ownership Agreement is not entered into by each Party by the Option Deadline Date, then the option in favor of Customer shall terminate and be of no further force or effect. If the Customer exercises its option to purchase the Energy System from SDG&E and the parties enter into a Transfer of Ownership Agreement, then the Transfer of Ownership Agreement will provide that Customer will be responsible for (a) the redesign and reconfiguration of the Energy System to

provide power to the Property on Customer's side of the utility electric service meter and (b) all costs relating to such redesign and configuration, including but not limited to: net metering, interconnection, local permitting costs (if necessary).

- c) If Customer does not elect to purchase the Energy System as set forth in subparagraph 2.3.2(b) above, then SDG&E will remove the Energy System pursuant to the requirements of Section 2.5 below.

2.3.3 Default by Customer. If Customer fails to perform any material provision of the Agreement within 30 days from receipt of written notice from SDG&E to cure, SDG&E may immediately thereafter without any further notice to Customer terminate the Generation Phase and remove the Energy System in accordance with Section 2.5 below and the provisions of the FLA and exercise any other right or remedy provided by law or equity.

2.3.4 Default by SDG&E. If SDG&E fails to perform any material provision of the Agreement within 30 days from receipt of written notice from Customer to cure, Customer may immediately upon notice to SDG&E elect to terminate the Generation Phase and have SDG&E remove the Energy System in accordance with Section 2.5 below and the provisions of the FLA and exercise any other right or remedy provided by law or equity.

2.4 Termination Fee. Upon termination of the Agreement by Customer after the Design Phase for any reason other either (a) a right to do so under Section 2.2.2 above, or (b) a breach or event of default by SDG&E under this Agreement or under the FLA, or upon termination of the Agreement by SDG&E due to Customer default, at SDG&E's discretion, Customer shall be required to reimburse SDG&E for reasonable expenses incurred to remove the Energy System and any unamortized original installation costs ("Termination Fee"). Customer shall pay the Termination Fee within 30 days of receipt of any invoice from SDG&E and reasonable supporting documentation.

2.5 Removal of Energy System. Except as otherwise provided herein, if the Agreement is terminated (or if Customer elects to have SDG&E remove the Energy System upon expiration of the Generation Phase), SDG&E will remove the Energy System from the Property at its sole cost and expense. Customer agrees that SDG&E will not be required to, and understands that SDG&E will not remove any concrete pads or other such permanent facilities installed to accommodate the Energy System. SDG&E will exercise reasonable care in the removal, but shall have no liability to Customer for damages to the Property or persons at the Property unless and to the extent such damages were due to the negligence or willful misconduct of SDG&E. SDG&E will remove the Energy System within 120 days of termination of this Agreement. If SDG&E does not remove the Energy System within the specified time frame, Customer may have the System removed at SDG&E's cost and expense.

### **SECTION 3 – SDG&E’S STATUS AND SUBCONTRACTORS**

3.1 Status of SDG&E. SDG&E will perform and execute the Agreement as an independent contractor to the Customer and will not be an agent or employee of the Customer for any purpose.

3.2 Subcontracts and Subcontractors. SDG&E will have the right to have all or any part of the design, installation, operation, maintenance, or removal of the Energy System or any other obligation of SDG&E undertaken concerning the Agreement, accomplished by subcontractors pursuant to subcontracts between SDG&E and such subcontractors. Subcontractors will be selected by SDG&E, and SDG&E will be solely responsible for the performance of the subcontractors. SDG&E will pay each subcontractor according to the terms of the subcontract between SDG&E and the respective subcontractor.

3.3 No Liens. SDG&E will keep the Property free from all liens from contractors or subcontractors performing work for SDG&E; provided, however, that SDG&E may dispute any such lien so long as SDG&E posts a bond sufficient to remove such lien as an encumbrance on title to the Property in accordance with applicable law, no later than 30 days after filing.

3.4 Performance of Work. All work performed by SDG&E on or about the Property shall be performed in a good and workmanlike manner in compliance with the FLA and all laws, ordinances, regulations, permits and approvals and in conformance with the Final Plans. SDG&E shall promptly repair, at its sole cost and expense, any alteration or damage to the Property which results from the entry by SDG&E onto the Property or the installation or removal of the Energy System, unless such damage or alteration is specifically shown on the Final Plans approved by Customer for the Energy System or is caused by Customer, its contractors, subcontractors, licensees, employees, tenants, invitees and agents.

### **SECTION 4 - OWNERSHIP**

4.1 Ownership of Energy System. SDG&E will at all times during the term of this Agreement have sole ownership of all and each part of the Energy System. Customer agrees that the Energy System is the personal property of SDG&E and shall execute or obtain the execution of such documents SDG&E reasonably requires in order to document its ownership interest and protect it from the claims of creditors of Customer.

4.2 Ownership of Proprietary Property Rights. Customer will not acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyright, patent, other intellectual or proprietary rights, inventions or processes, or similar items of property that are or may be used concerning the Energy System.

4.3 Ownership of Existing Equipment and Materials. Despite anything herein to the contrary, title and ownership of the equipment and materials presently existing at the Property at the time of execution of this Agreement will remain in the sole possession of the Customer.

## SECTION 5 – CUSTOMER’S RIGHTS AND DUTIES

5.1 Reasonable Assistance. Customer shall give SDG&E such reasonable assistance as SDG&E requires in order to design and construct the Energy System within the Property. Provided, however, that Customer shall not be required to pay any out-of-pocket expenses in connection with such assistance. Customer and SDG&E shall mutually agree upon locations for the Energy System.

5.2 Access / Space. Customer shall provide SDG&E with reasonable access to the Energy System in accordance with the FLA.

5.3 Equipment Enclosure. Customer shall allow SDG&E, at its sole but reasonable expense, to provide and erect a secured equipment enclosure for the ground mounted equipment, if any, in accordance with Final Plans to be approved by Customer during the Design Phase.

5.4 Structural Engineering and Roof Design.

5.4.1 Design Provisions. Customer shall provide shading, orientation, and slope information for roof locations requested by SDG&E. Customer shall provide structural verification by a registered engineer to SDG&E that the roof on which the PV panels will be sited are adequate for that purpose. Customer shall be responsible for all structural related costs pertaining to the building roof provided that SDG&E shall design the Energy System in such a manner that will not require structural modifications to the Property. Customer agrees (a) to make no photocopies or other copies of the Energy System plans; disclose them to no one except for its landlord and lender, and its engineers, accountants, attorneys and other agents who have a need to know; and (b) that the plans will be used for no other purpose than this Agreement and construction permitting.

5.4.2 Roof Compatibility. During Design Phase and Installation Phase, SDG&E shall work with Customer and Customer’s roofing contractor to maintain the Customer’s existing roof warranty. After installation of the Energy System, SDG&E shall not knowingly take any action that will void the roof warranty.

5.4.3 Maintenance Provisions. Customer shall provide a water spigot located on the roof for buildings on which the PV panels will be sited.

5.5 Data and Tours. Customer shall provide permission to SDG&E, its affiliates and their respective employees, contractors and agents to inspect, monitor, photograph and videotape the Energy System; conduct surveys; utilize all data for evaluation, business planning, and marketing purposes; arrange tours by interested 3<sup>rd</sup> parties. SDG&E shall obtain permission from Customer prior to conducting tours. Tours shall be scheduled and conducted in a manner that is not disruptive to Customer’s business operations.

5.6 Utility Charges. Property occupant shall remain responsible for all utility charges for electricity and gas consumed by Customer according to the applicable SDG&E schedule(s).

5.7 Permits. Customer shall be responsible for obtaining all building permits for the Property, excluding the permit(s) for the Energy System. In connection with the permits to be obtained by SDG&E for the Energy System, at the request of SDG&E, Customer shall reasonably: (a) cooperate to obtain such permits (but with no out of pocket expense to Customer); (b) join with SDG&E if and to the extent required by the application agency, in applications and/or proceedings related to the Energy System; and (c) execute those agreements, easements and dedications, if any, that are required by government agencies, as a condition to the issuance of such permits and which are acceptable to Customer in its reasonable discretion.

5.8 LEED<sup>TM</sup> Certification and Energy Efficiency. Customer shall register for LEED and submit the proper application and documentation to obtain LEED<sup>TM</sup> Silver certification from the US Green Building Council for the Property or all individual buildings within the Property. Customer shall design the buildings within the Property to meet or exceed the California Title 24 building standard in effect at the time the building is permitted by 20%.

5.9 Customer's General Responsibilities. Except as may be expressly provided herein, Customer will not move, modify, remove, adjust, alter, change or operate the Energy System, or any part of it, during the term of the Agreement, without prior written direction or approval of SDG&E, except if there is an occurrence reasonably deemed by the Customer to be a bona fide emergency of which the Customer will use commercially reasonable efforts to notify SDG&E immediately. Customer shall maintain the Property (exclusive of the Energy System) in good repair, casualty and condemnation, excepted. If Customer becomes aware of any damage, harm or threats to the Energy System, Customer will immediately notify SDG&E and reasonably cooperate in SDG&E's efforts to repair and prevent future damage to the Energy System.

## **SECTION 6 – SDG&E'S RIGHTS AND DUTIES**

6.1 Design Responsibilities. SDG&E shall at its sole expense be responsible for the design of the Energy System including mechanical, electrical, and plumbing engineering design, project schedule, and associated drawings. SDG&E shall design the Energy System in such a manner that will not require structural modifications to the Property. SDG&E shall review the Energy System design with the Customer's roofing contractor to discuss roof warranty issues. If the design will void the roof warranty, SDG&E will revise the design of the Energy System at its sole expense so as to not void the roof warranty. SDG&E shall provide to Customer all necessary space requirements, weight load specifications, dimensions, noise, emissions, power ratings, heat rates, water use, water discharge, roof compatibility information of the Energy System. SDG&E will provide Customer with a complete copy of the design drawings. SDG&E shall be responsible for obtaining the building permits for the Energy System.

6.2 Coordination. SDG&E shall provide for project management of the Energy System. SDG&E and the Customer agree to coordinate the work to reduce interference with the performance of the work of the Customer and its employees taking place at the Property.

6.3 Utility Interconnection. SDG&E shall be responsible for the utility interconnection application and associated fees for the Energy System. The Energy System shall interconnect on the utility grid side of the Customer meter.

6.4 Delivery and Installation. SDG&E shall purchase, deliver and provide at its sole expense the Energy System and all associated equipment and material as described in Exhibit "A" including but not limited to having the Energy System delivered to the Property.

6.5 Equipment Pad. SDG&E shall at its sole expense provide for the design, materials, and construction of the equipment pad for the Energy System.

6.6 Communications. SDG&E shall at its sole expense provide for a separate communication service for use in monitoring the performance of the Energy System.

6.7 Commissioning. SDG&E shall complete commissioning of Energy System, including inspection, testing and approval of operation of System. SDG&E shall remove all debris, equipment and surplus materials from the Property and leave the Property in "broom clean" condition. SDG&E shall provide to Customer a written notice delivered registered mail when the installation is complete and the Energy System is operational ("Commissioning Completion Notice"). Customer shall be responsible for all inspections of the Energy System and attached property including but not limited to building roofs, carports, electrical room, and equipment enclosure prior to signing the Commissioning Completion Notice. SDG&E shall provide a complete set of as-built drawings to Customer.

6.8 SDG&E's Operating Rights. During the Generation Phase, SDG&E will have the right to operate the Energy System on such days, at such times of day and for the periods of time, as SDG&E, in its sole discretion, decides. SDG&E shall have no liability to Customer for failure to operate the Energy System.

6.9 SDG&E's Maintenance Responsibilities. During the Generation Phase, at no cost to Customer, SDG&E will operate the Energy System and keep it in good condition and repair. However, should the need for maintenance or repairs arise from negligence or misconduct of the Customer or any employee or other agent of the Customer, SDG&E may, at its election, perform maintenance, repairs and make adjustments to the Energy System and may charge the Customer for this work. SDG&E will invoice the Customer for such charges and the Customer will pay SDG&E's invoice within Thirty (30) days of receipt.

6.10 Upgrading or Altering the Equipment. SDG&E will have the right to maintain, make adjustments, enhance, repair, replace and change the Energy System. Prior written approval of Customer of the plans, specifications and permits to be procured by SDG&E for any replacement, alteration or addition to the Energy System that increases the Energy System footprint, weight, or height, is required, which approval may be granted, conditioned or denied by Customer in Customer's reasonable discretion. Replacements, substantial alterations or additions to the Energy System will become a part of the Energy System.

## **SECTION 7 – CLOSING OR CONDEMNATION OF PROPERTY**

7.1 Closing. During the Generation Phase, Customer will give SDG&E a minimum of ninety (90) days notice of its intent to close or abandon the Property for an indefinite period.

7.2 Condemnation. If a condemnation renders most of the Property uninhabitable or unusable, Customer will give SDG&E notification upon receipt of condemnation notice from the local jurisdiction. SDG&E shall have the right to terminate the Agreement and remove the system at its sole discretion and shall not be required to adhere to the conditions in Section 2.5

## **SECTION 8 - CHANGED CONDITIONS**

8.1 If conditions are encountered at the Property that are (a) subsurface or otherwise concealed physical conditions that are at variance with those indicated in the Customer's documents or other information furnished by the Customer, or (b) unknown physical conditions of an unusual nature, which are at variance with those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement, then notice by the observing Party will be given to the other Party promptly before the conditions are disturbed and in no event later than thirty (30) days after the first observance of the conditions. Customer and SDG&E will promptly investigate such condition and, where appropriate, will approve equitable changes to the Agreement.

## **SECTION 9 – [INTENTIONALLY OMITTED]**

## **SECTION 10 - REPRESENTATIONS AND WARRANTIES**

10.1 By Each Party. Each Party warrants and represents to the other that:

- a) It has all requisite power, authority, licenses, and permits, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder except as otherwise stated in Section 2.1 above.
- b) Its execution, delivery, and performance of this Agreement have been duly authorized and all necessary corporate action to consummate the transactions contemplated hereunder have been completed, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation.
- c) Its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound or affected.
- d) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits, or orders that would materially and adversely affect its ability to perform hereunder.

10.2 Customer's Representations. The Customer hereby warrants, represents, and promises that:

- a) It intends to continue to use the Property in a manner similar to its present use, and to the same extent.
- b) To the best of its knowledge and ability, it has provided or will provide timely to SDG&E all applicable records requested by SDG&E and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects and not contain any omissions necessary to prevent the information provided from being misleading.

## SECTION 11 – INSURANCE

11.1 Commercial General Liability Insurance. Customer shall carry and maintain on an “occurrence” form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Customer under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 (One Million Dollars) per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

11.2 Commercial or Business Automobile Liability Insurance. Customer shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Customer of automobiles, including loading or unloading of any of Customer's automobiles (including owned, non-owned, leased, rented and/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 (One Million Dollars) combined single limit.

11.3 Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State of California, Customer shall maintain in force workers compensation insurance for all of its employees. If applicable, Customer shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers compensation insurance. Customer shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 (One Million Dollars) per accident and per employee for disease. In lieu of such insurance, Customer may maintain a self-insurance program meeting the requirements of the State of California shall be performed along with the required Employers' Liability insurance.

## SECTION 12 - INDEMNIFICATION

12.1 Patent Indemnity. SDG&E will protect, defend, indemnify and hold the Customer harmless against and from all claims, judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees relating to alleged patent or copyright infringement,

misappropriation of proprietary rights, or trade secrets or similar claims, resulting from installation and/or use of the Energy System or other actions taken by SDG&E concerning this Agreement.

12.2 General Mutual Indemnity. SDG&E and the Customer will indemnify, defend and hold each other harmless from all claims, actions, costs, expenses, damages and liabilities, including attorneys' fees, consultant fees and expert witness fees, arising out of, connected with, or resulting from the negligence or willful misconduct of such Party's and/or its employees, agents, contractors, subcontractors and consultants. However, neither Party will indemnify the other against claims, damages, expenses, or liabilities resulting from the negligence or willful misconduct of the other Party. The duty to indemnify will continue in full force and effect despite the expiration or termination of this Agreement, and will exist with respect to any claims based on facts or conditions that occurred before any said termination.

### **SECTION 13 - DISPUTES**

#### 13.1 [INTENTIONALLY DELETED]

13.2 Arbitration. Except for a claim or request for equitable relief, all disputes in any way relating to, arising under, connected with or incident to the Agreement will be arbitrated in San Diego County, California, according to Construction Industry Arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. No Party may be compelled to arbitrate if the Parties cannot join a third-party necessary to the arbitration. If any such necessary party is not joined, then all Parties are excused from arbitration. This agreement to arbitrate will be enforceable under the Federal Arbitration Act, or under the law of California, if and only if under the terms of the Federal Arbitration Act such Act is not applicable.

13.3 Litigation. If a Party makes a claim or request for equitable relief or the Parties are otherwise excused from arbitration, the Parties agree that all disputes in any way relating to, arising under, connected with, or incident to the Agreement, and over which federal courts have subject matter jurisdiction, will be litigated, if at all, exclusively in the United States District Court for the Southern District of California, and, if necessary, the corresponding appellate courts. The Parties further agree that all disputes in any way relating to, arising under, connected with, or incident to this Agreement, and over which the federal courts do not have subject matter jurisdiction, will be litigated, if at all, exclusively in the Courts of the State of California, and, if necessary, the corresponding appellate courts. The Parties expressly submit themselves to the personal jurisdiction of the State of California.

### **SECTION 14 - CONDITIONS BEYOND THE CONTROL OF THE PARTIES**

14.1 Force Majeure. If SDG&E or the Customer shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, insurrections or riots, civil unrest, terrorist acts, war, labor disputes, labor strikes, inclement weather, fire, earthquake, tsunami, hurricane, flood, tornado or similar "force majeure" events, this Agreement shall remain in

effect. but the non-performing Party's obligations shall be suspended until the said event shall have ended. Alternatively, the Agreement may be terminated by either Party as provided in Section 2, in which event the Parties shall have the rights and obligations set forth in said Section.

14.2 Regulatory Risk. If any federal, state, or municipal government or regulatory authority, including, without limitation, a public utility commission, should for any reason enter an order, modify its rules or codes, or take any action whatever, that disallows utility ownership of generation systems, or materially affects SDG&E's expectations regarding the purpose and operation of this Agreement, SDG&E may immediately terminate the Agreement on written notice to Customer. In such event, SDG&E may elect whether to remove the Energy System or sell it to Customer as provided in Section 2.3.2(b), and no Termination Fee shall be due to or payable by Customer.

### **SECTION 15 - MISCELLANEOUS**

15.1 Notices. Any and all notices and other communications made in accordance with this Agreement shall be in writing and shall be deemed properly given or made if delivered in person or via confirmed telecopy with a hard copy placed in first class mail, postage prepaid, or delivered by reputable overnight courier to the Party's designated representatives at the addresses below:

SDG&E: San Diego Gas & Electric Company  
8335 Century Park Court, CP12G  
San Diego, CA 92123-1569  
Attn: Paul Stapleton, Sustainable  
Technologies Business Manager  
Telephone: 858-654-1886  
Telecopy: 858-636-5724

Customer: Fairfield Grossmont Trolley LLC  
5510 Morehouse Drive, Suite 200  
San Diego, CA 92121  
Attn.: Patrick J. Gavin  
Telephone: 858-457-2123  
Telecopy: 858-457-3982

15.2 Further Assurances. Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably required to carry out the terms of this Agreement.

15.3 Assignment. Each Party may assign or transfer all or part of its rights, obligations, or interests in this Agreement, only after obtaining the written consent of the other Party which consent will not be unreasonably withheld. Notwithstanding the foregoing, Customer may withhold its consent to a transfer by SDG&E to any party other than a regulated public utility company replacing SDG&E as the provider of electrical service to the area within

which the Property is located, and SDG&E may withhold its consent to a transfer by Customer to any party who is not the successor in interest to Customer under the Ground Lease, or the then fee owner of the Property. Any proposed assignee or transferee shall expressly assume in writing the duties and obligations of the assigning Party under this Agreement and shall immediately furnish or cause to be furnished to the other Party a true and correct copy of the document or documents evidencing such assignment or transfer and assumption of duties and responsibilities. Any purported assignment or transfer of any right, obligation or interest in this Agreement which fails to comply with this Section shall be void and of no effect. If an assignment of all or part of the rights, obligations, and interests has been approved as provided in this Section, the assignee or transferee shall become a Party for all purposes under this Agreement and the assigning party shall no longer be a party.

15.4 Binding Obligations. The obligations set forth in this Agreement shall be binding and inure to the benefit of the Parties and their successors, heirs, permitted assigns, personal representatives, and representatives in bankruptcy.

15.5 Rights in Third Parties. The Parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement or to create for the benefit of any third party any duty or standard of care by any covenant, obligation, or undertaking established herein.

15.6 Entire Agreement. This Agreement and the FLA constitute the complete and final expression of the agreement of the Parties and is intended as a complete and exclusive statement of the terms and conditions which supersede all prior and contemporaneous offers, promises, representations, negotiations, discussions, and communications, which may have been made in connection with the subject matter of this Agreement and the FLA. All Exhibits and Recitals are incorporated by reference.

15.7 Amendments. This Agreement may be modified or amended only by a written instrument duly executed by the Parties.

15.8 Attorney's Fees. If any action or proceeding is brought by any Party to remedy any breach of this Agreement or to enforce any of its provisions, the prevailing Party (as defined in the FLA) shall be entitled to recover, in addition to any other relief granted in such action or proceeding, reasonable attorney's fees, witness fees, expert witness fees, court costs, and disbursements.

15.9 Section Headings Not Binding. The section headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

15.10 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition shall be held invalid as to either Party or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless such court holds that the provisions are not severable from all other

provisions of this Agreement.

15.11 Waiver of Rights. No waiver of any term or condition of this Agreement shall be effective unless made in writing signed by the Party against whom the waiver is sought to be enforced. Any waiver at any time by either of the Parties of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any other or subsequent default or matter.

15.12 Governing Law. This Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the State of California. The Parties hereby consent to the jurisdiction and venue of the courts located in the County of San Diego, State of California, in resolving any dispute arising under or concerning this Agreement.

**SECTION 16 – LIMITATION OF LIABILITY**

16.1 No Punitive Damages. Except as expressly set forth in this Agreement, neither Party shall have liability to the other for any punitive damages.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**SAN DIEGO GAS & ELECTRIC  
COMPANY**

**FAIRFIELD GROSSMONT  
TROLLEY, LLC**

By: FF California Housing Fund LLC, its  
Manager

By: 

By: FF Properties, Inc., its Manager

Name: Richard M. Morrow

Name: J. Bruce J. Brown

Title: Vice President, Customer Services Title: Vice President

## EXHIBIT "A"

### ENERGY SYSTEM DESCRIPTION

#### Photovoltaic (PV) System

The PV system shall consist of crystalline silicon panels mounted on the roof of a building or carport. The PV system will be connected on the utility side of the meter and provide power directly to the utility grid. In case of a utility power outage the PV system will disconnect from the grid and cease generation until utility power has been re-established. The PV system equipment design and placement shall blend in aesthetically with the site and minimize impacts including roof penetrations. The following equipment shall be included in the PV system:

- PV panels
- AC to DC Inverter(s)
- Combiner box(es)
- Isolation transformer

#### General Materials

The following materials and equipment exclusively for the Energy System shall be included:

- Wiring and conduit
- Transformer(s)
- Meters
- Breaker panel(s)
- Disconnect switches
- 120 volt power box(es)
- Communications equipment box(es)
- Data acquisition system

- EXHIBIT B

(INSERT COPY OF FACILITY LICENSE AGREEMENT)