

## ENERGY SERVICES AGREEMENT

This Energy Services Agreement (the "Agreement") is made and entered into as of the 21<sup>st</sup> day of January, 2011 ("Effective Date"), by and between Pacific Station Property, LLC, a Delaware limited liability company (the "Customer"), and San Diego Gas & Electric Company, a California corporation ("SDG&E"), collectively the "Parties."

### RECITALS

- A. WHEREAS, Customer owns certain real property known as Pacific Station and located at 687 South Coast Highway in Encinitas, California (collectively the, "Property"); and
- B. WHEREAS, SDG&E will install at 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, SDG&E will be able to verify the conditions under which the Energy System can be installed and operated on an economical basis for future electric distribution projects; and
- D. WHEREAS, after 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 according to the Tariff Rules ("Rules") approved by the California Public Utilities Commission ("CPUC"). The Energy System will operate in parallel with SDG&E's electric distribution system and occupants would be billed according to the applicable SDG&E schedule(s). No special provisions will be provided by SDG&E unless otherwise agreed upon by both Parties and approved by the CPUC.

1.2 Billing. Bills for electric service will be rendered according to the Rules approved by the CPUC. If Customer elects to become a Direct Access (DA) customer as defined in the Rules and the Energy System is connected on the Customer's side of SDG&E's electric service meter, Customer agrees that SDG&E will continue to provide its meter reading services (Meter Data Management Agent).

1.3 Lease. SDG&E shall install and operate the Energy System at the Property in accordance with the terms set forth in that certain Facilities Lease Agreement dated as of even date herewith by and between the Parties ("FLA"). SDG&E shall not be responsible for additional rents, taxes, fees not included in the FLA.

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. Customer will provide reasonable access to the Property so that SDG&E may timely complete the Design Phase.

2.1.1 Design Completion Notice. SDG&E will provide written notice to the Customer when the design has been completed in the form of Exhibit B attached hereto (“Design Completion Notice”). Upon receipt of the Design Completion Notice and a copy of the set of plans, including the location of any concrete slabs or structures, Customer will have seven (7) calendar days to review the plans and provide input to SDG&E, prior to signing the Design Completion Notice.

2.1.2 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 to the other Party.

2.2 Installation Phase. Upon SDG&E’s receipt of the Design Acceptance Notice from Customer, SDG&E will commence the Energy System’s installation (“Installation Phase”). SDG&E shall use reasonable efforts to coordinate the Installation Phase with the Customer’s construction schedule and complete the Installation Phase commensurate to the completion of building commissioning and occupant move-in, if applicable (assuming delivery of the Energy System is not delayed 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 prior written notice to the other Party, 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 for any reason other than a breach by SDG&E, 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, 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 Commissioning Completion Notice. SDG&E shall complete commissioning of the Energy System, including inspection, testing and approval of operation of the Energy 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 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, equipment pad, and equipment enclosure prior to signing the Commissioning Completion Notice. At Customer’s request, SDG&E shall cooperate in a water test of the Energy System to ensure that the installation is water-tight prior to signing the Commissioning Completion Notice. SDG&E shall provide a complete set of as-built drawings to Customer.

2.3 Generation Phase

2.3.1 Generation Phase Term. Upon Customer's receipt of Commissioning Completion Notice, the Agreement shall be in effect for a term of ten (10) years commencing on the date of the Commissioning Completion Notice, such initial term referred to as the "Initial Generation Phase Term." The Initial Generation Phase Term, as the same may be extended by the First Extended Term or the Second Extended Term as defined below, shall also be referred to herein as "Generation Phase Term".

2.3.2 Options at End of Generation Phase Term. Upon expiration of the Initial Generation Phase Term, the Agreement shall be automatically extended for an additional five (5) year term ("First Extended Term") unless the Customer or SDG&E elects option (a), (b), or (c) below. Upon expiration of the First Extended Term, the Agreement shall be automatically extended for a second five (5) year term ("Second Extended Term") unless Customer or SDG&E elects one of option (a), (b), or (c) below.

At least sixty (60) calendar days prior to the expiration of the Initial Generation Phase Term or First Extended Term, Customer and SDG&E may elect one of the following options:

- a) Customer shall have the option to notify SDG&E of its intent to purchase the Energy System for a negotiated price, exercisable by delivery of written notice to SDG&E, such price to be negotiated by the Parties in good faith. SDG&E may decide not to sell the Energy System to Customer in its sole discretion. The sale may be subject to CPUC approval, and the Generation Phase Term may be extended by mutual agreement of the Parties while awaiting CPUC approval. Customer will be responsible for the redesign and reconfiguration of the Energy System to provide power to the Property on Customer's side of SDG&E's electric service meter. Customer will be responsible for all costs including, but not limited to: all applicable SDG&E customer tariffs, metering and interconnection requirements, local permitting costs (if necessary). Both Parties will sign an agreement that will include all terms and conditions of the sale.
- b) Customer shall have the option to terminate the Agreement and request that SDG&E remove the Energy System pursuant to the requirements of Section 2.5 below.
- c) If Customer does not elect either (a) or (b) above, then SDG&E shall have the option to terminate the Agreement and remove the Energy System pursuant to the requirements of Section 2.5 below, exercisable by delivery of written notice to Customer.

At the end of the Second Extended Term, the Customer has the option to purchase the Energy System as set forth in subparagraph 2.3.2(a) above. If Customer does not elect to purchase the Energy System, SDG&E shall remove the Energy System pursuant to Section 2.5 below.

2.3.3 Default by Customer. If Customer fails to perform any material provision of the Agreement within thirty (30) calendar days from receipt of written notice from SDG&E to cure, SDG&E may immediately thereafter without any further notice to Customer terminate the Agreement and remove the Energy System in accordance with Section 2.5 below 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 thirty (30) calendar days from receipt of written notice from Customer to cure,

Customer may immediately upon notice to SDG&E elect to terminate the Agreement and have SDG&E remove the Energy System in accordance with Section 2.5 below.

2.4 Termination Fee. Except for a termination under Section 2.3.2 above, upon termination of the Agreement by Customer for any reason other than a breach or event of default by SDG&E, or upon termination of the Agreement by SDG&E due to Customer's default or condemnation under Section 7.2 below, Customer shall be required to reimburse SDG&E for reasonable expenses incurred to remove the Energy System and reasonable original installation labor (but not equipment or materials) costs ("Termination Fee"). Customer shall pay the Termination Fee within thirty (30) calendar days of receipt of any invoice from SDG&E and reasonable supporting documentation.

2.5 Removal of Energy System. If the Agreement is terminated (or if Customer elects to have SDG&E remove the Energy System upon expiration of the Generation Phase Term), SDG&E will remove the Energy System from the Property and ensure proper electrical service is provided. 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 such damages were due to SDG&E's sole negligence or its willful misconduct. 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 and shall promptly remove any such liens; provided, however, that SDG&E may dispute any such lien so long as SDG&E posts a bond against such lien in accordance with applicable law.

### **SECTION 4 - OWNERSHIP**

4.1 Ownership of Energy System. SDG&E will at all times during the term of this Agreement have sole ownership (which includes responsibility and liability) of all and each part of the Energy System installed by SDG&E. 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; provided, however, that such documents make clear that SDG&E is not a creditor of Customer. SDG&E agrees that it will promptly execute any consent, subordination or other document reasonably requested by Customer that may be required as a condition of any financing, sale, entitlement, or approval for the Property if SDG&E is in receipt of a subordination, non-disturbance and attornment agreement (an

“SNDAA”) from any of Customer’s current or future mortgagees, beneficiaries of a deed of trust or lessors with respect to any aforementioned financing, sale, entitlement or approval.

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, environmental attributes 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 space and reasonable access to the Energy System in accordance with the FLA.

5.3 Intentionally Omitted.

5.4 Structural Engineering and Roof Design.

5.4.1 Design Provisions. Customer shall provide shading, orientation, and slope information for roof and carport locations requested by SDG&E. Customer shall provide structural verification by a registered engineer to SDG&E that the roof and carport structures 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 and carport structures; provided, however, that Customer will not be obligated to modify or upgrade the building structure to accommodate the Energy System. Customer to be reimbursed by SDG&E for additional costs agreed upon by SDG&E Project Manager before installation. In cases where infrastructure is installed before approval, SDG&E will review and reimburse for reasonable additional infrastructure costs specific to the installation of the renewable energy system. This review and reimbursement will occur during the Design Phase and before the Installation Phase. Customer shall be entitled to terminate this Agreement and the FLA during the Design Phase if Customer and SDG&E cannot come to an agreement on the amount of this reimbursement, and in the event Customer exercises its right to terminate at such time, Customer shall have no liability whatsoever to SDG&E upon such termination. Customer agrees: (a) to make no photocopies or other copies of the Energy System plans; (b) to disclose them to no one except for its architects, engineers, general contractor, accountants, attorneys and other agents who have a need to know; and (c) that the plans will be used for no other purpose than this Agreement and construction permitting.

5.4.2 Roof Compatibility. During the Design Phase and the 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 or negligently 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 third parties. SDG&E shall obtain permission from Customer prior to conducting tours and agrees that Customer may require any third parties to execute a liability waiver as a condition of the tour. Tours shall be scheduled and conducted in a manner that is not unreasonably disruptive to Customer's business operations. SDG&E, in its sole discretion, shall have the right to exclude any project participants from its external communications regarding the Energy System.

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 tariffs and rate schedule(s).

5.7 Permits. Customer shall be responsible for obtaining all building permits excluding the permit for the Energy System. SDG&E shall provide any information pertaining to the Energy System and compensate for incremental building permit fees specific to the Energy System to Customer. Customer shall provide to SDG&E an invoice for incremental costs. In connection with the permits for the Energy System, at the request of SDG&E, Customer shall reasonably: (a) cooperate to obtain such permits; (b) join with SDG&E in all applications and proceedings; and (c) execute all agreements, easements and dedications required by government agencies, as a condition to the issuance of such permits.

5.8 LEED® Certification and Energy Efficiency. Customer shall register for LEED and submit the proper application and documentation to obtain LEED 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 twenty percent (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 in good repair and will use its best efforts to protect and preserve 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 SDG&E's side of SDG&E's electric service meter or, at SDG&E's election, on the Customer's side of SDG&E's electric service meter. A temporary power outage may be necessary to interconnect the Energy System. This outage will be coordinated with the Customer.

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 communications service for the Energy System.

6.7 SDG&E's Operating Rights. During the Generation Phase Term, 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.

6.8 SDG&E's Maintenance Responsibilities. During the Generation Phase Term, 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.

6.9 Upgrading or Altering the Equipment. SDG&E will have the right to maintain, make adjustments, enhance, repair, replace and change the Energy System. Replacements, substantial alterations or additions to the Energy System will become a part of the Energy System.

6.10 Termination by SDG&E. SDG&E reserves the right to terminate the Agreement and remove the Energy System as set forth in Section 2.5 above at any time due to verified unsafe or hazardous conditions that may threaten the safety of personnel or pose a risk of property damage.

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

7.1 Closing. During the Generation Phase Term, Customer will give SDG&E a minimum of ninety (90) days written 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 written 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.
- 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 and represents 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, to the best of Customer's actual knowledge, 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 – INTENTIONALLY OMITTED**



## **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 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 sole negligence or willful misconduct of that Party's employees or agents. However, neither Party will indemnify the other against claims, damages, expenses, or liabilities resulting from alleged, claimed, or concurrent negligence or 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. The indemnity obligations of this Section 12.2 are in addition to, and do not diminish or reduce, the indemnity obligations set forth in the FLA.

## **SECTION 13 - DISPUTES**

13.1 **Payment Disputes.** Customer and SDG&E agree to use their best efforts to promptly resolve any disputes regarding invoices, so that payments to either Party are not unnecessarily delayed. Accordingly, within fourteen (14) calendar days of receipt of an invoice from an invoicing Party, the other Party will notify the invoicing Party of the following: (i) all objections, in whole or part, that the other Party has to the invoice; (ii) the specific dollar amount the other Party disputes, and (iii) the specific dollar amount the other Party does not dispute. The other Party will also attach all documents and calculations on which it relies upon to support its objections. In all instances, the other Party will pay the invoicing Party the undisputed portion of the invoice within the periods set forth in the Agreement or the FLA. The invoicing Party's acceptance of a payment in an amount less than that stated in its invoice is not a concession by the invoicing Party that the full amount stated is not due and owing. The Parties will resolve the disputed portion of the payment(s) according to Section 13.2.

13.2 **Litigation.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any lawsuit brought in connection with this Agreement (as may be permitted hereunder) shall be brought in the appropriate court of the County of San Diego, 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' 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 (but Customer shall not be obligated to purchase), and no Termination Fee shall be due 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, CP12A  
San Diego, CA 92123-1569  
Attn.: Contract Manager  
Sustainable Communities Program  
Telephone: (858) 637-7901  
Facsimile: (858) 654-8655

Customer: Pacific Station Properties, LLC  
8910 University Center Lane, Suite 265  
San Diego, CA 92122  
Attn.: John DeWald  
Title: Manager  
Telephone: (760) 633-1620  
Facsimile: (760) 633-1738

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; provided, however, that assignment of this Agreement by Customer to a successor who takes title to the Leased Space (as defined in the FLA) shall not require the consent of SDG&E; provided, further, that SDG&E may terminate this Agreement and the FLA within forty-five (45) calendar days of the assignment in SDG&E's sole discretion if SDG&E does not approve of the assignee. 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. This Agreement and the FLA shall terminate if the proposed assignee or transferee does not acknowledge and consent to be obligated under the terms herein. 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. Notwithstanding the foregoing, SDG&E may assign this Agreement and the FLA to an Affiliate, as defined herein, provided that such Affiliate expressly assumes in writing the duties and obligations of SDG&E under this Agreement and the FLA. SDG&E shall provide Customer with notice

prior to any assignment of this Agreement and the FLA to any Affiliate. An "Affiliate" means (a) SDG&E's parent company or any wholly owned subsidiary of SDG&E's parent company, (b) an entity controlling, under common control with or controlled by SDG&E or SDG&E's parent company, including an entity resulting from a merger, non-bankruptcy reorganization or consolidation with SDG&E or SDG&E's parent company; provided that the California Public Utilities Commission has determined that such transfer, merger, reorganization or consolidation satisfies all of the criteria set forth in California Public Utilities Code Section 854, including, without limitation, the requirement of subsection (c)(1) thereof that such transaction will maintain or improve the financial condition of the resulting public utility doing business in the state, or (c) a transferee of substantially all of SDG&E's stock or shares or assets. For purposes of this section, the word "control," as used above, means with respect to a corporation, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

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 Consequential Damages. Except as expressly set forth in this Agreement, neither Party shall have liability to the other for any direct, indirect, incidental, consequential or 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**

**PACIFIC STATION PROPERTIES, LLC**

By: 

By: See Attached

Name: James Avery

Name: John Dewald

Title: Senior Vice President – Power Supply

Title: Manager

**APPROVED AS TO FORM:**



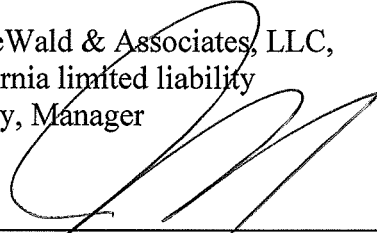
PACIFIC STATION PROPERTY LLC,  
a Delaware limited liability company

By: Pacific Station Holdings LLC,  
a Delaware limited liability company,  
its sole Member

By: Pacific Station LLC,  
a California limited liability company,  
its Manager

By:   
\_\_\_\_\_  
W. Neil Fox, III, Manager

By: John DeWald & Associates, LLC,  
a California limited liability  
company, Manager

By:   
\_\_\_\_\_  
John DeWald, Manager

## **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**

**DESIGN COMPLETION NOTICE**  
Between  
San Diego Gas & Electric Company  
AND

**EXAMPLE**

For \_\_\_\_\_, California

Pursuant to Section 2.1.1 of the Energy Services Agreement, SDG&E hereby notifies Customer that the Design Phase of this project is complete.

Customer acknowledges that Customer has had an opportunity to review the plans and provide written input to SDG&E and hereby agrees to proceed with the Installation Phase in accordance with the Agreement.

**SAN DIEGO GAS & ELECTRIC  
COMPANY**

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

By: EXAMPLE

By: EXAMPLE

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

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

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

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

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

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