

## DECOMMISSIONING AGREEMENT

This Decommissioning Agreement (this "Agreement"), dated effective as of [\_\_\_\_\_] (the "Effective Date"), is between [\_\_\_\_\_] ("County"), and [\_\_\_\_\_] ("Owner"). County and Owner may be referred to herein individually, as a "Party" and collectively, as the "Parties."

### Recitals:

A. Owner has permitted and intends to construct, operate and maintain a solar energy facility with an estimated capacity of [\_\_\_\_\_] that will generate electric power (the "Facility") at [\_\_\_\_\_] (the "Site"), which is owned by [\_\_\_\_\_] (the "Site Owner").

B. County requires that the Facility be decommissioned and removed upon the cessation of its operation at Owner's expense in accordance with the decommissioning plan attached hereto as Exhibit A ("Decommissioning" and such plan, the "Decommissioning Plan") and requires that Owner post a form of surety deemed acceptable to County to cover the cost of Decommissioning in the event that Owner fails to properly perform Decommissioning (such cost, taking into account the salvage value of the Facility, the "Removal Cost").

C. Owner intends to post a surety in an amount equal to the amount listed in Exhibit A and County has determined that such surety is acceptable to cover the Removal Cost and satisfies Owner's obligations under in accordance with the terms and conditions hereof.

### Agreement

In consideration of the covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### 1. Surety.

(a) Owner shall notify County of the date that the Facility achieves commercial operation as determined by Owner (the "Commercial Operation Date") within thirty (30) days following such date. Financial Security shall be phased in and provided to the County over the first eleven (11) years of the project as follows:

(1) On or before the first anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover ten (10) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

(2) On or before the sixth anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover fifty (50) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

(3) On or before the eleventh anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover one hundred (100) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in

the Decommissioning and Site Reclamation Plan.

Owner shall post as financial security in the event Owner fails to perform its obligations relating to Decommissioning (in any case, the "Posted Surety"): (i) a surety bond in favor of County (the "Decommissioning Bond") with a face amount equal to the amount listed in Exhibit A (the "Surety Amount"); (ii) cash in an escrow account held by the County that is reasonably acceptable to the Parties in the amount of the Surety Amount; (iii) a letter of credit from a reasonably acceptable financing institution for the Surety Amount; or (iv) any combination of the foregoing such that the aggregate amount of the Posted Surety is in an amount not less than the Surety Amount. At any time, Owner may replace the Posted Surety with any one or more of the foregoing, provided that the aggregate amount of the Posted Surety is an amount not less than the Surety Amount. If, at any time, Owner replaces any Posted Surety with an alternative form of surety, County shall return to Owner the replaced surety (i.e., bond, cash, letter of credit) within fifteen (15) days following such replacement. Any interest on cash posted as surety shall be the property of Owner and remitted to Owner by County on an annual basis on each anniversary of the date that such cash was posted.

(b) Any funds comprising or that are the proceeds of the Posted Surety shall be used solely to pay for the Removal Cost. Other than the Posted Security, Owner shall have no security obligations to County during the operation of the Facility; *provided, however*, that, in the event the Removal Cost exceeds the amount in the Posted Surety, Owner shall be responsible for any such excess cost, provided that such excess cost is not as a result of County using any amounts from the Posted Surety for any reason other than to pay for Decommissioning in accordance with the Decommissioning Plan. In the event that County uses any funds comprising or that are the proceeds of the Posted Surety for any reason other than to pay for Decommissioning in accordance with the Decommissioning Plan, County shall be responsible to reimburse such amount to Owner and County shall indemnify and hold harmless Owner and the Site Owner from any claim, loss, damage, liability or cost (including reasonable attorney costs) arising from such use of funds for reasons other than to pay for Decommissioning in accordance herewith.

## **2. Decommissioning.**

(a) Owner shall complete Decommissioning within twelve (12) full calendar months following the earlier to occur of (i) the date of the end of the Facility's useful life, and (ii) the date that the Facility ceases to be operational for more than twelve (12) consecutive months, in either case, whether Decommissioning has occurred shall be determined by Owner. Upon completion of Decommissioning, Owner shall provide written notice thereof to County, and County shall have forty-five (45) days to determine, in writing, provided to Owner, whether such Decommissioning is complete and in compliance with the Decommissioning Plan. Upon such determination by County, or County's failure to issue same within such forty-five (45) day period, Owner's obligations hereunder shall be deemed discharged, this Agreement shall be deemed terminated and the Posted Surety shall, within thirty (30) days following the earlier of the County's determination that Decommissioning is complete or expiration of the forty-five (45) day period, shall be returned to Owner by the County.

## **3. Use of Surety.**

(a) If, within the forty-five (45) day period described in Section 2, County determines that Owner failed to adequately perform Decommissioning, in whole or in part, substantially in accordance herewith or that Owner Abandoned (as hereinafter defined) the Facility, County shall, within five (5) days following such determination, notify Owner in writing 3 thereof (the "Failure Notice") and ninety (90)

days following the date of the Failure Notice, County (or its agents or contractors) may enter onto the Site to commence Decommissioning using the Posted Surety to cover its costs in accordance therewith, unless Owner has either (i) commenced Decommissioning and is diligently pursuing same during such ninety (90) day period such that Decommissioning will be complete by the expiration of twelve (12) full calendar months following the date of the Failure Notice, or (ii) provided a reasonable explanation for the delay in Decommissioning. Upon completion of Decommissioning, Owner's obligations hereunder shall be deemed discharged, this Agreement shall be deemed terminated and, if at the time that County commenced Decommissioning in accordance with this Section 3, cash had been posted as surety, any cash remaining after Decommissioning by County is complete shall be returned to Owner along with any other form of Posted Surety within thirty (30) days after such completion. For purposes hereof, "Abandoned" means when either (x) no electricity is generated by the Facility for more than twelve (12) consecutive months, or (y) Owner has stated in writing to the County Building Inspector that Owner intends to abandon, vacate, or cease solar energy creation operations at the Site indefinitely.

#### 4. **Force Majeure.**

(a) Neither Party shall be considered in default or breach in the performance of their respective obligations hereunder to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event (defined in Section 4(b)). The affected Party's obligation to perform the subject obligation hereunder shall be suspended during the tenure of the subject Force Majeure Event and such Party shall not be liable in damages or otherwise for a failure to perform, if and only to the extent that such Party is unable to perform, or prevented from performing by a Force Majeure Event. As soon as reasonably possible after the occurrence of the Force Majeure Event, but no later than thirty (30) days following the date that the affected Party has knowledge that such occurrence qualifies or could qualify as a Force Majeure Event, the affected Party shall give the other Party written notice describing the particulars of the occurrence and its estimated duration. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to recover from the effects of the Force Majeure Event and shall resume performance of its obligations hereunder as soon as reasonably practicable

(b) For purposes of this Agreement, "Force Majeure Event" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that: (i) such event is not due to the affected Party's negligence or willful misconduct; and (ii) such event is not the result of any failure of the affected Party to perform any of its obligations hereunder. Subject to the foregoing conditions, Force Majeure Events include: acts of God; war; acts of the public enemy; terrorism; riot; civil commotion; sabotage; fire; floods; landslide; volcanic eruption; epidemics; global pandemics; quarantine restrictions; embargos; and governmental authority decreed official state of emergency.

#### 5. **Miscellaneous.**

(a) **Amendment and Waiver.** This Agreement may not be altered or amended, nor any rights hereunder waived, except by a written agreement executed by the Parties. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other (or further) exercise thereof.

(b) **Notices.** All notices, demands and other communications required or permitted hereunder ("Notices") shall be in writing and addressed as set forth below. A Notice shall be deemed made or given when personally delivered, three (3) business days after deposit in the U.S. mail, registered or certified,

postage prepaid, return receipt requested, or two (2) business days after being delivered to a courier guaranteeing overnight delivery. Either Party may, by notice so delivered to the other Party, change the address or individual to which delivery shall thereafter be made.

If to County: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

(c) **No Assignment; Binding Effect; Third Parties.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Owner may assign this agreement without County's prior consent to any of Owner's affiliates upon notice of such assignment delivered to County. Any assignment in violation of the foregoing shall be void. For the avoidance of doubt, any change in ownership of Owner shall not be deemed an assignment hereunder. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the Parties and their respective agents, successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any third party any benefits, rights or remedies.

(d) **Governing Law; Venue; No Jury Trial; Severability.** This Agreement shall be governed by and construed in accordance with the laws of [ \_\_\_\_\_ ] without regard to its conflict of laws principles. The Parties consent to exclusive venue and jurisdiction in the state and federal courts located in [ \_\_\_\_\_ ]. TO THE EXTENT ALLOWED UNDER APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH REGARD TO ANY DISPUTE RELATED HERETO. If any provision hereof is deemed by a court of competent jurisdiction to be unenforceable, in whole or in part, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof.

(e) **Integration; Execution.** This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, understandings and statements with respect thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. Facsimile or electronic signatures are valid and binding on the Parties.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, The Parties have executed this Agreement to be effective as of the Effective Date.

**County:**

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

Name:

Title:

Agreed to and Accepted, as of \_\_\_\_\_, 20\_\_,

**Owner**

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

Name:

Title:

Agreed to and Accepted, as of \_\_\_\_\_, 20\_\_,

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**EXHIBIT A**

Decommissioning Plan

*[see attached]*

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