

**AGREEMENT FOR ENVIRONMENTAL REVIEW AND  
OPTION TO LEASE**

THIS AGREEMENT FOR ENVIRONMENTAL REVIEW AND OPTION TO LEASE ("**Agreement**") is made and entered into as of the 23rd day of November, 2010 ("**Effective Date**"), by and between The Metropolitan Water District of Southern California, a California public agency ("**Metropolitan**"), and BRIGHTSOURCE ENERGY, INC., a Delaware corporation ("**BrightSource**").

**RECITALS**

A. Metropolitan is the owner of certain real property totaling approximately 6,640 acres located in Riverside County, California, and more particularly described in Exhibit A and shown on Exhibit B, attached hereto ("**Property**").

B. Metropolitan issued a Request for Proposals (RFP No. 951) to make use of the Property for renewable energy projects. BrightSource submitted a response to RFP No. 951 with a proposal to construct and operate a solar thermal generating facility ("**Project**") on the Property pursuant to a ground lease with Metropolitan.

C. BrightSource desires to further investigate the suitability of the Property for the Project, the feasibility of the Project, and if appropriate, to pursue environmental review and other required approvals for the Project. Metropolitan desires to undertake its role as a responsible agency for the Project pursuant to the California Environmental Quality Act ("**CEQA**") and to establish lease terms for use of the Property to allow BrightSource to determine the feasibility of the Project.

D. Pursuant to California law, jurisdiction over the licensing of the Project is vested in the California Energy Commission, which acts as the lead agency for purposes of CEQA. BrightSource and Metropolitan acknowledge that the Project cannot proceed on the Property and the lease for use of the Property cannot be entered into until the California Energy Commission has certified the final environmental document and issued its final decision approving certification of the Project.

E. BrightSource and Metropolitan desire to enter into this Agreement to establish the terms for use of the Property during the environmental review and Project certification process, and to establish the terms for a ground lease of the Property subject to final approval of environmental documents and certification of the Project by the California Energy Commission as the lead agency, approval of the environmental documents by Metropolitan as a responsible agency, and approval of the ground lease by Metropolitan in compliance with CEQA and other applicable laws.

## AGREEMENT

1. Initial Site Review. BrightSource shall perform an investigation of the Property ("**Initial Site Review**") during the period beginning on the Effective Date and ending at 5:00 p.m. (local time at the Property) on the next business day immediately following the date six (6) months after the Effective Date ("**Initial Site Review Period**"). The Initial Site Review may consist of the following actions, and such other activities as the parties may agree are reasonably required for BrightSource to determine the suitability of the Property for the Project, the feasibility of the Project, and whether to pursue certification of the Project.

1.1. Physical Investigation.

1.1.1. Within fifteen business days of the Effective Date, Metropolitan shall provide to BrightSource true and complete copies of all documents, instruments or writings related to the Property ("**Property Documents**") in its possession or control, including, without limitation, contracts affecting the Property, any environmental reports, well reports or other reports concerning the Property, any maps or surveys, any records of the use of Hazardous Materials (as defined in Section 10.7, below) on the Property, and maintenance or other records relating to the Property. The copies of the Property Documents provided to BrightSource shall be as complete as the copies or originals of such documents in Metropolitan's possession or control. During the Initial Site Review Period, and during the Entitlement Period (as defined below), Metropolitan shall immediately provide BrightSource with any additional Property Documents that Metropolitan receives or locates.

1.1.2. Throughout the Initial Site Review Period, BrightSource shall have the right to enter on the Property, upon reasonable prior notice to the Metropolitan, to perform such investigations of the Property as BrightSource deems appropriate which may include, without limitation, environmental, biological, cultural and geotechnical studies and/or other invasive inspections of the Property, along with surveying, permitting, engineering work, investigation of routes and rights-of-way to interconnect the Property with existing natural gas and electrical lines and investigation of water availability ("**Investigations**"). Metropolitan agrees to cooperate fully with BrightSource in assisting BrightSource to complete its Investigations.

1.1.3. The parties agree that during the Initial Site Review Period, BrightSource shall have the right to construct a meteorological station on the Property ("**Station**"). Promptly following the Effective Date, the parties agree to locate a mutually acceptable location for the Station, which Station shall occupy an area approximately fifty-five feet (55') wide and fifty-five feet (55') long. The Station shall be constructed by BrightSource, at BrightSource's sole cost and expense. In the event that BrightSource terminates this Agreement or otherwise does not execute a lease of the Property for the Project, promptly following the termination of this Agreement, BrightSource shall, at its sole cost, remove the Station from the Property, repair any damage caused by such removal and otherwise return the portion of the Property on which the Station is located to its condition as of the Effective Date to the extent reasonably practical. The Station and all equipment at any time acquired by or for BrightSource and located at the Station or on the Property are hereby severed by agreement and intention of the parties and shall remain severed from the Property, shall be considered as the

property of BrightSource and, even though attached to or affixed to or installed upon the Property, shall not be considered to be fixtures or a part of the Property.

1.1.4. In the event of a termination of this Agreement without the execution of a lease of the Property for the Project, BrightSource shall restore the Property to its condition on the Effective Date to the extent reasonably practicable. Notwithstanding the foregoing, BrightSource shall not be liable to Metropolitan with respect to any environmental or physical condition that is merely discovered, as opposed to caused, by BrightSource. BrightSource's obligations hereunder shall survive the termination or expiration of this Agreement for one year.

## 1.2. Title Review.

1.2.1. During the Initial Site Review Period, BrightSource shall have the right to obtain and review: (i) a current preliminary title report on the Property ("**Title Report**") prepared by a title company of BrightSource's choice; (ii) copies of the most recent property tax bills for the Property; and (iii) an ALTA or boundary survey of the Property prepared by a licensed surveyor selected by BrightSource ("**Survey**"). BrightSource shall pay the cost of each item, except that Metropolitan shall provide BrightSource, at no expense and within thirty days of the Effective Date, copies of the most recent property tax bills for the Property that are in Metropolitan's possession and a copy of the Record of Survey of the Property performed for Metropolitan and filed with the Riverside County Recorder on January 28, 2008 in Book 126, pages 93 to 108, of Records of Survey of such county. BrightSource shall pay for all other costs incurred for its title review.

1.2.2. BrightSource shall notify Metropolitan in writing ("**Title Notice**"), at least thirty business days prior to the expiration of the Initial Site Review Period, which exceptions to title shown on the Title Report, if any, and which Survey matters, if any, will not be acceptable to BrightSource upon execution of a lease of the Property for the Project. If BrightSource's Title Notice objects to any exceptions to title or any Survey matters, Metropolitan shall have fifteen business days after receipt of the Title Notice to notify BrightSource in writing that: (i) Metropolitan will remove such title exceptions and/or correct such Survey matters on or before the execution of a lease of the Property for the Project in a manner reasonably satisfactory to BrightSource, or (ii) that Metropolitan elects not to cause such title exceptions and/or Survey matters to be removed or corrected. If Metropolitan gives BrightSource notice under clause (ii) above, BrightSource may, prior to the expiration of the Initial Site Review Period terminate this Agreement pursuant to Section 1.4.1.

1.2.3. If BrightSource has accepted the condition of title and the Survey, or if Metropolitan has agreed to remove any objectionable matters, Metropolitan shall not cause any change in the condition of title or the matters disclosed by the Survey during the term of this Agreement without providing written notice of such change to BrightSource. BrightSource may notify Metropolitan in writing ("**Gap Notice**") of any title exceptions or conditions or Survey matters disclosed by Metropolitan as described in this Section or otherwise disclosed to BrightSource following the acceptance of the condition of title and the Survey but prior to execution of a lease of the Property for the Project. If BrightSource sends a Gap Notice to Metropolitan, Metropolitan shall have ten (10) business days after receipt of the Gap Notice to

notify BrightSource in writing whether Metropolitan will remove or correct such matters, and BrightSource shall thereafter have five (5) business days to respond to Metropolitan's notice, all as set forth in Section 1.2.2, above, and the Initial Site Review Period and execution of a lease of the Property for the Project shall automatically be extended as reasonably necessary to provide Metropolitan and BrightSource such additional periods of time to remove or correct such matters.

1.2.4. Subject to completion of environmental review and approval of the Project, a lease of the Property to BrightSource shall be subject to those matters that either (i) are not objected to in writing within the time periods provided in Sections 1.2.2 or 1.2.3, above; or (ii) if objected to in writing by BrightSource, are matters which BrightSource has thereafter elected to accept a lease of the Property subject to.

### 1.3. Consideration for Initial Site Review Period.

1.3.1. In consideration for the entry on the Property and the performance by Metropolitan of the obligations required during the Initial Site Review Period, BrightSource shall pay to Metropolitan the sum of [REDACTED] (the "**Initial Site Review Period Consideration**"), payable in four installments of [REDACTED] each. The payments shall be due and payable on the Effective Date, forty-five (45) days after the Effective Date, ninety (90) days after the Effective Date, and one hundred thirty-five (135) days after the Effective Date. The Initial Site Review Period Consideration shall be paid directly to Metropolitan, not into the Escrow (as defined below), and shall be non-refundable.

### 1.4. Termination During Initial Site Review Period.

1.4.1. BrightSource may terminate this Agreement at any time during the Initial Site Review Period by written notice to Metropolitan accompanied by any unpaid portion of the [REDACTED] of Initial Site Review Period Consideration. In the event of such termination, Metropolitan shall retain the entirety of the [REDACTED] Initial Site Review Consideration. Termination shall not release BrightSource of its obligation to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

1.4.2. Metropolitan may not terminate this Agreement during the Initial Site Review Period, except for an event of default by BrightSource as provided in Section 8. Termination shall not release BrightSource of its obligations to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

2. Entitlement Period. At any time prior to the expiration of the Initial Site Review Period, BrightSource may provide written notice to Metropolitan of its decision whether to proceed with the Entitlement Period (as defined below). In the event that BrightSource notifies Metropolitan that BrightSource elects not to proceed with the Entitlement Period, or if BrightSource fails to give any notice regarding the Entitlement Period prior to expiration of the Initial Site Review Period, this Agreement shall thereupon be deemed terminated by BrightSource pursuant to Section 1.4.1. In the event that BrightSource notifies Metropolitan that

BrightSource elects to proceed with the Entitlement Period, this Agreement shall remain in force and the following terms and conditions shall apply:

2.1. Application for Certification. BrightSource shall diligently submit its application with the California Energy Commission for certification of the Project on the Property (the “CEC Permit”) (if not already done during the Initial Site Review Period) and shall diligently pursue certification during the period beginning on the date the Initial Site Review Period expires and ending on the earlier of: (i) 5:00 p.m. (local time at the Property) on the next business day immediately following the date Metropolitan serves its Board Action Notice (as defined below) upon BrightSource; or (ii) 5:00 p.m. (local time at the Property) on the next business day immediately following the date twenty-four months after the date the Initial Site Review Period expires (“Entitlement Period”). The Entitlement Period may be extended by BrightSource for two (2) additional six-month periods upon written notice to Metropolitan and payment of the consideration set forth in Section 2.2.3.

2.2. Environmental Review.

2.2.1. Throughout the Entitlement Period, BrightSource shall have the right to enter on the Property, upon reasonable prior notice to the Metropolitan, to perform such Investigations of the Property as may be reasonably required to successfully complete the environmental review and certification process for the Project. Metropolitan agrees to cooperate fully with BrightSource in assisting BrightSource to complete its Investigations. In the event of a termination of this Agreement without the execution of a lease of the Property for the Project, BrightSource shall restore the Property to its condition on the Effective Date to the extent reasonably practicable. Notwithstanding the foregoing, BrightSource shall not be liable to Metropolitan with respect to any environmental or physical condition that is merely discovered, as opposed to caused, by BrightSource. BrightSource's obligations hereunder shall survive the termination or expiration of this Agreement for one year.

2.2.2. BrightSource acknowledges and agrees that Metropolitan is obligated to comply with the CEQA as a responsible agency prior to approval of a lease of the Property for the Project. Nothing in this Agreement shall limit Metropolitan's authority or responsibility with regard to its role as a responsible agency for purposes of CEQA. Metropolitan shall not be deemed to have breached any provision of this Agreement based on any act or omission in the performance of its obligations under CEQA, including but not limited to, submission of comments regarding the Project to the lead agency, consultation with the lead agency, exercise of its independent judgment in determining the adequacy of the environmental document for its purposes, adoption of alternatives or mitigation measures, the making of findings, or disapproval of the Project to avoid environmental effects. Metropolitan shall have no liability to BrightSource for any act or omission in the performance of its obligations under CEQA.

2.2.3. Consideration for Entitlement Period. In consideration for the entry on the Property and the performance by Metropolitan of the obligations required during the Entitlement Period, BrightSource shall pay to Metropolitan the sum of [REDACTED] at the commencement of the Entitlement Period, and [REDACTED] every six months thereafter during the Entitlement Period.

BrightSource may extend the Entitlement Period beyond the initial twenty-four (24) month term for up to two (2) additional six (6) month periods by providing written notice, together with a payment of [REDACTED] to Metropolitan on or before the then current expiration date (each such payment, and all such payments collectively, the “**Entitlement Period Consideration**”). Each installment of Entitlement Period Consideration shall be deposited by BrightSource, on or before the date due, into the Escrow described in Section 3.5. In the event this Agreement is terminated pursuant to Section 2.3.1, below, during the Entitlement Period, BrightSource shall be entitled to a refund from Escrow of a portion of its most recent [REDACTED] Entitlement Period Consideration payment, equal to the proportionate amount of the current six month period that has not expired (e.g., termination at the end of two months of the six month period shall entitle BrightSource to a refund of two-thirds of the last [REDACTED] payment).

### 2.3. Termination During Entitlement Period.

2.3.1. BrightSource may terminate this Agreement at any time during the Entitlement Period by written notice to Metropolitan. Except to the extent otherwise provided in this Section 2.3.1, in the event of such termination, all Entitlement Period Consideration shall be immediately released to Metropolitan from Escrow, and all Initial Site Review Consideration and Entitlement Period Consideration shall be retained by Metropolitan. Notwithstanding the foregoing, in the event of such termination, BrightSource shall be entitled to a refund from Escrow of a proportionate share of the last payment made prior to termination pursuant to Section 2.2.3, above. Termination shall not release BrightSource of its obligation to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

2.3.2. Metropolitan may not terminate this Agreement during the Entitlement Period, except for an event of default by BrightSource as provided in Section 8. Termination shall not release BrightSource of its obligations to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

3. Option to Lease. Subject to Metropolitan’s compliance with CEQA, including approval of the environmental document prepared by the lead agency, adoption of alternatives or mitigation measures, and the making of appropriate findings required for approval of the lease of the Property for the Project, Metropolitan agrees that BrightSource shall have the exclusive right to lease all or part of the Property for the Project (“**Option**”) on the terms and conditions set forth in the form of lease agreement attached hereto as Exhibit C, except as such terms and conditions may be revised to comply with alternatives or mitigation measures adopted pursuant to CEQA (the “**Lease**”). The portion of the Property to be included as the land subject to the Lease (the “**Leased Parcel**”), if the Option is exercised, shall be specified by BrightSource in BrightSource’s Notice of Exercise of Option as provided in Section 3.1.4, and shall contain a minimum of Four Thousand (4,000) acres. The Leased Parcel may consist of more than one existing legal parcels within the Property, but may not include only portions of an existing legal parcel, unless the leasing of less than an entire legal parcel is permitted by law.

#### 3.1. Exercise of the Option in Compliance with CEQA.

3.1.1. The Option may only be exercised by BrightSource upon certification of the Project by the California Energy Commission and approval by Metropolitan of the environmental document in accordance with CEQA, under the procedures set forth below.

3.1.2. BrightSource acknowledges and agrees that Metropolitan is obligated to comply with CEQA as a responsible agency prior to approval of a Lease of the Property for the Project. Metropolitan shall comply with CEQA prior to approving execution of the Lease. Nothing in this Agreement shall limit Metropolitan's authority or responsibility with regard to its role as a responsible agency for purposes of CEQA. Metropolitan shall not be deemed to have breached any provision of this Agreement based on any act or omission in the performance of its obligations under CEQA, including but not limited to, exercise of its independent judgment in determining the adequacy of the environmental document for its purposes, adoption of alternatives or mitigation measures as a condition of approval of the lease, the making of findings, or disapproval of the lease of the Property for the Project to avoid environmental effects. Metropolitan shall have no liability to BrightSource for any act or omission in the performance of its obligations under CEQA. Notwithstanding the provisions of this Section, Metropolitan shall not require any modification of the rental rates, royalty payments, or other financial terms set forth in the form of lease agreement attached hereto as Exhibit C unless such modification is for the purpose of reimbursing Metropolitan for the cost of implementing alternatives or mitigation measures for the Project that Metropolitan is obligated to implement pursuant to CEQA, or to ensure compliance with other environmental or regulatory requirements as a result of its approval of the lease of the Property for the Project.

3.1.3. Metropolitan shall give written notice to BrightSource (the "**Board Action Notice**") within fifteen days following the occurrence of Lease Approval (as defined below) or of Lease Disapproval (as defined below). In the event that the Board Action Notice indicates the Lease Disapproval has occurred, the provisions of Section 3.6 shall apply. In the event that the Board Action Notice indicates that Lease Approval has occurred, the written notice shall be accompanied by two copies of the approved Lease, with any additional modifications required as a result of CEQA or other environmental or regulatory requirements, together with copies of all CEQA mitigation measures and other conditions of approval adopted by Metropolitan in connection with approval of the Lease. As used herein, "**Lease Approval**" occurs on the date when all of the following are satisfied: (i) Metropolitan has reviewed and considered the environmental documents and completed its obligations as a responsible agency under CEQA with respect to approval of the Lease; and (ii) Metropolitan's governing board has granted its final approval for entering into the Lease. As used herein, "**Lease Disapproval**" occurs when Metropolitan's governing board makes a final determination disapproving entry into the Lease. Lease Disapproval shall be deemed to have occurred if Metropolitan fails to deliver a Board Action Notice within the Entitlement Period.

3.1.4. BrightSource may exercise the Option at any time during the "**Exercise Period**", which shall be that period of time commencing with Metropolitan's delivery of a Board Action Notice indicating Lease Approval has occurred, and ending at 5:00 p.m. (local time at the Property) on the thirtieth (30<sup>th</sup>) day after Metropolitan's delivery of such Board Action Notice. BrightSource may exercise the Option during the Exercise Period by signing and delivering to Metropolitan a written notice declaring that BrightSource is electing to exercise the

Option (the "**Notice of Exercise of Option**"). BrightSource's Notice of Exercise of Option shall also include the legal descriptions of the Leased Parcel that BrightSource elects to lease, pursuant to Section 3. BrightSource's Notice of Exercise shall also include a plat drawing of the Leased Parcel, showing its surveyed acreage, which shall be prepared by a licensed engineer or land surveyor. If BrightSource fails to deliver a Notice of Exercise of Option prior to the expiration of the Exercise Period, this Agreement shall be deemed terminated by BrightSource pursuant to Section 3.7.1.

3.1.5. Concurrently with delivery of its Notice of Exercise of Option, BrightSource shall deposit into the Escrow two fully executed originals of the Lease, as modified if applicable, and deposit into the Escrow the Option Exercise Consideration set forth in Section 3.2.

3.2. Consideration for Exercise of Option. In consideration for the exercise of the Option and execution of the Lease, BrightSource shall pay Metropolitan the additional sum of [REDACTED] (the "**Option Exercise Consideration**"), by depositing the Option Exercise Consideration into the Escrow described in Section 3.5. The separate payment of [REDACTED] to be paid under the Lease, at the Financial Closing as defined in the Lease, is not part of the Option Exercise Consideration governed by this Agreement.

3.3. Closing. The Lease shall become immediately effective and binding upon Metropolitan and BrightSource with respect to the Leased Parcel as of the "**Escrow Closing**". The Escrow Closing shall occur on a date mutually agreed between Metropolitan and BrightSource, which date shall be no later than ten (10) business days after BrightSource has delivered a Notice of Exercise of Option to Metropolitan. At the Escrow Closing, the Entitlement Period Consideration and Option Exercise Consideration held in Escrow, including any interest earned thereon, shall be released to Metropolitan, and Metropolitan and BrightSource shall exchange fully executed originals of the Lease setting forth the Escrow Closing date as the Effective Date of the Lease, attaching as Exhibit B to the Lease the legal description of the Leased Parcel served with BrightSource's Notice of Exercise of Option, and making any other insertions contemplated by the Lease form attached hereto as Exhibit C. Metropolitan and BrightSource shall execute such other instructions or documents as may reasonably be required by the Escrow holder to carry out the Escrow Closing in accordance with this Agreement.

3.4. Legal Challenges to Lease Approval. In the event that the Lease Approval is subject to any administrative appeal or legal challenge, the Escrow Closing shall be extended to a date mutually agreed between Metropolitan and BrightSource, which shall be no later than ten (10) business days after such appeals and challenges have been finally resolved and final action has been taken by Metropolitan to conform the Lease consistent with any orders, judgments, decisions, or settlements made in connection with such appeals or challenges.

3.5. Escrow. The Entitlement Period Consideration and the Option Exercise Consideration shall be considered paid by BrightSource when deposited by BrightSource into an interest-bearing escrow account established with Stewart Title Guaranty Company (the "**Escrow**"). Metropolitan and BrightSource shall execute escrow instructions providing that the

funds deposited in the Escrow shall be held and disbursed in accordance with this Agreement. The Entitlement Period Consideration and Option Exercise Consideration and any interest earned thereon shall be held in the Escrow until either: (i) released to Metropolitan, as provided in Sections 3.3 or 3.7.1; (ii) released to BrightSource, as provided in Sections 3.6 or 5; (iii) released to the non-defaulting party as provided in Section 8; or (iv) released as otherwise provided in this Agreement. Except as provided in Sections 3.6, 5 and 8, all Entitlement Period Consideration and Option Exercise Consideration deposited into Escrow shall be non-refundable.

3.6. Lease Disapproval. If Metropolitan delivers a Board Action Notice to BrightSource indicating that Lease Disapproval has occurred, or if Metropolitan fails to deliver a Board Action Notice within the Entitlement Period, then the following shall apply: (i) the Option shall be deemed terminated; (ii) BrightSource shall be discharged from any obligations to pay Entitlement Period Consideration and Option Exercise Consideration; (iii) notwithstanding any provision of this Agreement or any Notice of Exercise of Option that may have been delivered, Metropolitan and BrightSource shall have no obligation to enter into the Lease; and (iv) all Entitlement Period Consideration held in Escrow shall be refunded to BrightSource, including any interest earned thereon.

3.7. Termination During Exercise Period.

3.7.1. BrightSource may terminate this Agreement at any time during the Exercise Period by written notice to Metropolitan. In the event of such termination, all Entitlement Period Consideration held in Escrow, including any interest earned thereon, shall be immediately released to Metropolitan and Metropolitan shall retain the entirety of the Initial Site Review Consideration and Entitlement Period Consideration paid. Termination shall not release BrightSource of its obligation to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

3.7.2. Metropolitan may not terminate this Agreement during the Exercise Period, except for an event of default by BrightSource as provided in Section 8. Termination shall not release BrightSource of its obligations to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above.

3.8. Termination After Exercise. After BrightSource delivers a Notice of Exercise of Option pursuant to Section 3.1.4, this Agreement may not be terminated by either party, except based upon an event of default by the other party as provided in Section 8.

4. Addresses for Notices and Document Deliveries.

All notices, document deliveries, and other communications made pursuant to this Agreement shall be in writing and shall be deemed to be delivered three days after being deposited in the United States Mail, postage prepaid, return receipt requested; or if delivered by messenger or other delivery service, or by electronic messaging or transmission, when received.

For delivery to be effective, the delivery must be made to the addresses set forth in this Section, unless prior written notice of a change of address or addressee is given:

Metropolitan: Metropolitan Water District  
of Southern California  
700 North Alameda Street  
Los Angeles, CA 90012  
Attn: Jill T. Wicke  
Phone: (213) 217-6306  
Fax: (213) 576-5492

with a copy (which shall not constitute notice) to: Metropolitan Water District  
of Southern California  
700 North Alameda Street  
Los Angeles, CA 90012  
Attn: John C. Clairday  
Phone: (213) 217-6314  
Fax: (213) 576-5220

BrightSource: BrightSource Energy, Inc.  
1999 Harrison Street, Suite 2150  
Oakland, California 94612  
Attention: Mark Zahn  
Phone: (510) 250-8152  
Fax: (510) 550-8165

with a copy (which shall not constitute notice) to: BrightSource Energy, Inc.  
1999 Harrison Street, Suite 2150  
Oakland, California 94612  
Attention: General Counsel  
Phone: (510) 250-8154  
Fax: (510) 550-8165

with a copy (which shall not constitute notice) to: Plageman, Lund & Cannon, LLP  
155 Grand Avenue, Suite 950  
Oakland, California 94612  
Attention: Dana W. Fox, Esq.  
Phone: (510) 899-6100  
Fax: (510) 899-6101

5. Condemnation. As used in this Agreement, the term "condemnation" means any taking, any pending taking, or any written notice to Metropolitan of a taking by any governmental entity of any part of the Property, for public use pursuant to its eminent domain authority. If, prior to exercise of the Option by BrightSource or after BrightSource's exercise of the Option and prior to the execution of the lease agreement by Metropolitan, any portion of the Property is taken by condemnation, or if the access thereto is reduced or restricted thereby, Metropolitan shall promptly give BrightSource written notice thereof. Each party shall have the right, in its sole and absolute discretion, to terminate this Agreement upon written notice to the other party not later than thirty (30) days after Metropolitan delivers notice of the condemnation.

In the event of a termination pursuant to this Section, all Entitlement Period Consideration and Option Exercise Consideration held in Escrow shall be refunded to BrightSource, including any interest earned thereon. Termination shall not release BrightSource of its obligation to restore the Property in accordance with Sections 1.1.3 and 1.1.4, above. In the event the parties elect to proceed with this Agreement and the lease of the Property for the Project is executed, BrightSource shall be entitled to receive and keep the portion of any and all awards of just compensation made or to be made in connection with such condemnation or eminent domain attributable to the leasehold estate.

6. Insurance.

During the term this Agreement is in effect, BrightSource shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the use of the Property or Investigations performed by BrightSource, or its agents, representatives, or employees.

6.1. Proof of Insurance. BrightSource shall provide proof of insurance coverage in an updated form during the term of this Agreement. Failure to provide the updated insurance form annually shall constitute a breach of this Agreement. BrightSource shall forward the ACORD form, attached hereto as Exhibit D, to Ms. Jill T. Wicke at the address set forth in Section 4, above.

6.2. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (i) Insurance Services Office Commercial Liability coverage (occurrence Form CG0001);
- (ii) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code I (any auto); and
- (iii) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

6.3. Minimum Limits of Insurance. BrightSource shall maintain limits no less than:

- (i) General Liability—including operations, products and completed operations as applicable, [REDACTED] per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the Property, or the general aggregate limit shall be twice the required occurrence limit.
- (ii) Automobile Liability-- [REDACTED] per accident for bodily injury and property damage.

(iii) Workers' Compensation—shall be furnished in accordance with statutory requirements of the State of California and shall include Employer's Liability coverage of [REDACTED] for each accident for bodily injury or disease.

6.4. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by Metropolitan. At the option of Metropolitan, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Metropolitan, its officers, officials, employees, agents and volunteers; or (ii) BrightSource shall provide a financial guarantee satisfactory to Metropolitan guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6.5. Verification of Coverage. BrightSource shall furnish Metropolitan with original certificates and amendatory endorsements effecting coverage required by this Section. The endorsements and certificates are to be received and approved by Metropolitan prior to the commencement of work. Metropolitan reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage, and coverage binders required by these specifications at any time.

6.6. Acceptability of Insurers. Insurance is to be placed with California admitted insurers with a current A.M. Best's rating of no less than A:VIII. A non-admitted carrier may be used with prior approval from Metropolitan, with an A.M. Best rating of no less than A:X. An exception to these standards will be made for the State Compensation Insurance Fund when not specifically rated.

6.7. General Liability Endorsements. The commercial general liability policy and automobile policies are to contain, or be endorsed to contain, the following provisions:

(i) Metropolitan, its directors, officers, employees and agents are to be covered as additional insureds as respects liability arising out of work or operations performed by or on behalf of BrightSource on the Property; and Metropolitan is to be covered as additional insured as respects automobiles owned, leased, hired, or borrowed by BrightSource.

(ii) For any claims related to the Project, BrightSource's insurance coverage shall be primary insurance as respects Metropolitan, its directors, officers, employees and agents. Any insurance or self-insurance maintained by Metropolitan, its directors, officers, employees or agents shall be excess of BrightSource's insurance and shall not contribute with it.

(iii) Each insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Metropolitan.

6.8. Other Endorsements and Insurance Provisions.

6.8.1. If General Liability coverages are written on a claims-made form, the "Retro Date" must be shown and must be before the Effective Date, a copy of the claims reporting requirements must be submitted to Metropolitan for review, the insurance must be maintained and evidence of insurance must be provided for at least three years after termination

of this Agreement, and if coverage is canceled or not renewed and not replaced with another claims-made policy form with a "Retro Date" prior to the Effective Date, BrightSource must purchase "extended reporting" coverage for a minimum of three years after termination of this Agreement.

6.8.2. The Workers' Compensation insurer agrees to waive all rights of subrogation against Metropolitan for injuries to employees of BrightSource resulting from the use of the Property.

7. Limitation of Remedies. In the event of a breach of this Agreement by Metropolitan, BrightSource shall not recover damages in an amount in excess of the payments it made to Metropolitan pursuant to this Agreement. In the event of a breach of this Agreement by BrightSource, Metropolitan shall not recover damages in an amount in excess of the payments required to be made by BrightSource pursuant to this Agreement

8. Default. An event of default by the applicable party, as defined below, shall permit the non-defaulting party to terminate this Agreement and/or pursue other appropriate remedies, which shall include, without limitation, the right to enforce specific performance of the defaulting party's obligations under this Agreement or to terminate this Agreement; provided that remedies shall be limited as set forth in Section 7. Upon termination of this Agreement by Metropolitan based upon an event of default by BrightSource, Metropolitan shall be entitled to immediate release and payment to Metropolitan of all Entitlement Period Consideration and Option Exercise Consideration held in Escrow, in addition to any other applicable remedies. Upon termination of this Agreement by BrightSource based upon an event of default by Metropolitan, BrightSource shall be entitled to a refund from Escrow of all Entitlement Period Consideration and Option Exercise Consideration deposited, in addition to any other applicable remedies. Each of the following events shall constitute an event of default by the applicable party:

8.1. The failure by BrightSource to pay amounts required to be paid hereunder when due;

8.2. The failure by any party hereto to perform any of the other terms, agreements or conditions set forth in this Agreement, where such failure continues for thirty (30) days (or such longer period reasonably required to cure such failure, not to exceed ninety (90) days), after receipt of written notice of such failure from the other party; or

8.3. A party files for bankruptcy or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it, where such involuntary petition or request is not dismissed within ninety (90) days after filing.

8.4. An assignment by either party in violation of Section 9, if not cured within any time period specified therein.

9. Assignment.

9.1. BrightSource shall not have any right to assign its rights and obligations under this Agreement without Metropolitan's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, BrightSource shall have the right, without the consent of Metropolitan, to assign, pledge or otherwise transfer in whole or part, its rights and obligations under this Agreement to an entity that is controlled by, or under common control with, BrightSource, or to any partner, joint venture or in connection with any debt or equity financing of BrightSource's Project; and Metropolitan agrees to enter into such direct agreements and other documents as may be reasonably be required or requested by BrightSource in connection with such assignment, pledge or transfer. Other than in the context of an assignment made for collateral purposes in connection with any debt or equity financing, any assignee of BrightSource under this Agreement shall agree in writing to be bound by all of the terms, covenants and conditions of this Agreement; provided that any assignee for debt or equity financing purposes shall agree to provide Metropolitan with the same notice of default and opportunity to cure as is provided to BrightSource. Upon Metropolitan's approval of the assignee and the assignee's execution of an express written assumption of BrightSource's rights and obligations hereunder, BrightSource shall be released from its obligations under this Agreement. Any assignment by BrightSource of its rights and obligations under this Agreement made without the prior written consent of Metropolitan, except where permitted hereunder, shall be void and shall constitute a default by BrightSource and result in the termination of this Agreement if not cured within thirty days after written notice of default by Metropolitan.

9.2. During the term of this Agreement, Metropolitan will not request or consider any other offer or proposal for the leasing, purchase, or use of the Property without the prior written consent of BrightSource, which shall not be unreasonably withheld, conditioned or delayed.

9.3. During the term of this Agreement, Metropolitan hereby agrees not assign or convey any interest in the Property to any third party without the prior written consent of BrightSource, which shall not be unreasonably withheld, conditioned or delayed.

10. Metropolitan's Representations and Warranties. Metropolitan hereby makes the following representations, warranties and covenants, which shall be true as of the Effective Date, shall be true in all respects on the date the Option is exercised by BrightSource, and shall survive the expiration or termination of this Agreement and/or the exercise of the Option, as applicable:

10.1. No parties other than Metropolitan are either in possession of any part of the Property or have any license, lease or other right or interest relating to the use or possession of any part of the Property, except for rights of public record or as otherwise disclosed on Exhibit E, attached hereto. There are no oral, unrecorded or undisclosed legal or equitable interests in the Property owned or claimed by any third party except as disclosed on Exhibit E, attached hereto.

10.2. To Metropolitan's actual knowledge the Property is not in violation of any applicable federal, state, local or other laws, regulations or codes (collectively, "**Laws and Restrictions**"). Metropolitan has not received any notice of any violations of any Laws or Restrictions or pending condemnation actions, nor does Metropolitan have any actual knowledge of the same or of the threat of the same.

10.3. To Metropolitan's actual knowledge the Property is not located within any conservation, preservation, archaeological, agricultural or historic district, or any zone recognized as having flood hazards, except as disclosed on Exhibit E, attached hereto.

10.4. To Metropolitan's actual knowledge, no litigation or proceeding is pending or threatened which would materially affect the Property or would affect the utilization of the Property for BrightSource's intended purposes, except as disclosed on Exhibit E, attached hereto.

10.5. Metropolitan has complied with and is now complying with all environmental Laws and Restrictions and the requirements of any permits or licenses issued under such environmental Laws and Restrictions with respect to the Property and all such permits and licenses remain in full force. Metropolitan has provided to BrightSource copies of any and all environmental reports within its possession applicable to the Property.

10.6. To Metropolitan's actual knowledge there are no past, pending or threatened environmental claims against the Property, or against Metropolitan with respect to the Property.

10.7. To Metropolitan's actual knowledge, Hazardous Materials have not at any time been generated, used, or stored on, or transported to or from, or released or disposed of on the Property, and Metropolitan has not used Hazardous Materials on or at the Property other than (a) as necessary to operate and maintain the Property, and (b) in compliance with all environmental Laws and Restrictions. To Metropolitan's actual knowledge, there are not now and never have been any underground storage tanks located on or under the Property and there is no asbestos contained in, forming part of, or contaminating any part of the Property. For purposes hereof, "**Hazardous Materials**" shall mean (i) any petroleum or petroleum distillates and products, flammable explosives, radioactive materials, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls in any concentrations, and radon gas; (ii) any chemicals, materials, substances or wastes which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or words of similar import, under any environmental Laws and Restrictions; and (iii) any other chemical, material, substance, or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental or regulatory authority.

10.8. Metropolitan has the full right, power and authority to execute this Agreement and, subject to compliance with CEQA, to lease the Property to BrightSource as provided herein and to carry out Metropolitan's obligations hereunder. All requisite corporate or other actions necessary to authorize Metropolitan to enter into this Agreement and to perform its obligations hereunder have been taken; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, any document or instrument to which Metropolitan is a party or by which Metropolitan or the Property is bound.

10.9. Metropolitan has not: (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (d) suffered the attachment or other judicial seizure of all or substantially all of its assets.

10.10. Metropolitan is the sole owner of fee title to the Property and is the only person or entity with a legal or beneficial ownership interest in the Property.

10.11. During the term of this Agreement, Metropolitan shall immediately notify BrightSource in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 10 shall survive the expiration or termination of this Agreement if, and only if, a lease of the Property for the Project is executed with BrightSource.

11. Metropolitan's Covenants. Metropolitan hereby covenants and agrees that, throughout the term of this Agreement:

11.1. Metropolitan shall not encumber the Property, except that Metropolitan shall have the right to encumber the Property with monetary obligations so long as any and all such monetary obligations are subject and subordinate to this Agreement.

11.2. BrightSource shall have the right, at BrightSource's expense, to apply for applications for land use entitlement approvals affecting the Property. Metropolitan shall cooperate with BrightSource in BrightSource's efforts to obtain such approvals by executing such documents as are reasonably necessary to obtain such approvals; provided that no land use entitlement approvals shall be binding on Metropolitan or the Property prior to the execution of a lease of the Property for the Project.

11.3. Metropolitan shall materially comply with all Laws and Restrictions applicable to the Property.

11.4. Metropolitan shall remove the Property from the market if listed and shall not, without BrightSource's written approval, market the Property for sale or lease during the term of this Agreement.

11.5. Metropolitan agrees not to grant or permit any possessory rights to any third party without the prior written consent of BrightSource, which may be given or withheld in BrightSource's sole and absolute discretion.

11.6. Metropolitan will not commit waste on the Property or otherwise materially change the Property. Metropolitan shall, at its sole cost and expense, remove all of Metropolitan's personal property and all debris and trash from the Property prior to the execution of a lease of the Property for the Project and Metropolitan shall repair any damage caused by such removal.

11.7. Metropolitan shall pay all real property taxes and assessments before any of the same become delinquent.

12. BrightSource's Representations and Warranties. BrightSource hereby makes the following representations, warranties and covenants, which shall be true as of the Effective Date, shall be true in all respects on the date the Option is exercised by BrightSource, and shall survive the expiration or termination of this Agreement and/or the exercise of the Option, as applicable:

12.1. BrightSource has the full right, power and authority to execute this Agreement and to lease the Property from Metropolitan as provided herein and to carry out BrightSource's obligations hereunder. All requisite corporate or other actions necessary to authorize BrightSource to enter into this Agreement and to perform its obligations hereunder have been taken; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, any document or instrument to which BrightSource is a party or by which BrightSource is bound.

12.2. BrightSource has not: (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (d) suffered the attachment or other judicial seizure of all or substantially all of its assets.

12.3. During the term of this Agreement, BrightSource shall immediately notify Metropolitan in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 12 shall survive the expiration or termination of this Agreement if, and only if, a lease of the Property for the Project is executed with BrightSource.

13. BrightSource's Covenants. BrightSource hereby covenants and agrees that, throughout the term of this Agreement:

13.1. BrightSource shall keep the Property free of any liens arising out of any work performed, materials furnished, or obligations incurred by BrightSource and its agents, by causing same to be removed within forty-five (45) days of recordation.

13.2. In BrightSource's efforts to obtain land use entitlements and Project approvals, BrightSource shall ensure that no land use entitlement approvals shall be binding on Metropolitan or the Property prior to the execution of a lease of the Property for the Project.

13.3. In its use of the Property, BrightSource shall materially comply with all applicable Laws and Restrictions.

13.4. BrightSource will not commit waste on the Property or otherwise materially change the Property, provided that this Section is not intended to prohibit the activities permitted under Sections 1.1 and 2.2.1. In the event of a termination of this Agreement without the execution of a lease of the Property for the Project, BrightSource shall, at its sole cost and

expense, remove all of BrightSource's personal property and all debris and trash deposited on the Property by BrightSource or its agents and BrightSource shall repair any damage caused by such removal.

#### 14. Indemnification.

14.1. Indemnification by Metropolitan. Metropolitan shall indemnify, defend and hold harmless BrightSource, its directors, officers, and employees, from and against all Losses suffered by any such person caused by (a) the inaccuracy or breach of any representation or warranty of Metropolitan in this Agreement; (b) the nonfulfillment or nonperformance of any covenant of Metropolitan in this Agreement; (c) the negligence or willful misconduct of Metropolitan or its agents related to the use of the Property by any such person; (d) any condition of the Property existing on the day before the Effective Date; (e) any release of Hazardous Materials on the Property caused or authorized by Metropolitan or its agents; or (f) any environmental claim from a third party with regard to a violation or alleged violation of any environmental Laws and Restrictions by Metropolitan or its agents. For the purposes of this Agreement, "Losses" means, collectively, liabilities incurred, damages paid, claims paid, judgments entered against BrightSource, penalties paid, fines paid, and costs or expenses incurred in defending against such Losses, including reasonable legal expenses. Metropolitan shall not be liable to indemnify, defend or hold BrightSource harmless for Losses incurred prior to written notice of such potential Losses and tender of defense by BrightSource, its directors, officers, or employees to Metropolitan. Notwithstanding anything in this Section, Metropolitan shall not be liable for any Losses allegedly caused by or resulting from Metropolitan's acts or omissions related to its compliance with CEQA requirements for approval of the Lease.

14.2. Indemnification by BrightSource. BrightSource shall assume all risk of loss to itself, which in any manner may arise out of the use of the Property during the term of this Agreement. Further, BrightSource agrees to indemnify, defend and hold harmless Metropolitan, its directors, officers, and employees, against any and all liability and expense, including the reasonable expense of legal representation whether by special counsel or by Metropolitan's staff attorneys, resulting from injury to or death of any person, or damage to any property, including property of BrightSource, or damage to any other interest of Metropolitan, including, but not limited to, suit alleging non-compliance with any statute or regulation which in any manner may arise out of this Agreement, or use of the Property by BrightSource, or any adjoining land used with the Property. BrightSource's assumption of risk and indemnity obligations under this Section 14.2 shall include, but not be limited to, any action brought against Metropolitan that includes an allegation of the dangerous condition of property as a specific cause of action.

14.3. Application and Survival of Indemnities. The indemnities provided in this Section 14 shall be in addition to and not in derogation or substitution of any indemnities provided elsewhere in this Agreement and any lease agreement executed between the parties for the Property. The provisions of this Section 14 shall survive the termination or expiration of this Agreement.

15. Broker's Commission. Each party represents and warrants to the other that it has not dealt with any real estate broker or agent with respect to the lease of the Property and each party agrees to indemnify and save the other harmless from any claims made by any brokers or

agents claiming to have dealt with such party. The terms and provisions of this Section 15 shall survive the expiration or termination of this Agreement.

16. Third Party CEQA Actions. In the event that any third party commences a legal action challenging Metropolitan's compliance with CEQA in connection with approval of the Lease, each party agrees that it shall defend the action with counsel of its own choosing and at its own expense.

17. Miscellaneous.

17.1. Construction. The parties acknowledge that each party and its counsel have reviewed, commented on, and approved this Agreement and the rule of construction that provides ambiguities within this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17.2. Time Periods. In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be deemed to be automatically extended to the next business day.

17.3. Confidentiality. Metropolitan shall, on or before the Effective Date, have entered into a non-disclosure agreement, the form of which is attached as Exhibit F.

17.4. Waiver of Jury Trial. To the extent permitted by law, BrightSource and Metropolitan expressly waive any right to trial by jury in any action brought to recover damages for breach of this Agreement.

17.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17.6. Entire Agreement. This Agreement, together with the attached exhibits, contain the entire agreement between the parties with respect to each matter embodied in this Agreement, and any prior agreements, written or oral, are superseded by this Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

17.7. Partial Invalidity. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable.

17.8. Counterparts; Signatures. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. Metropolitan and BrightSource hereby acknowledge and agree that they (a) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (b) are aware that the other party will rely on such signatures, and (c) hereby waive any

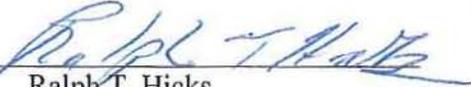
defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

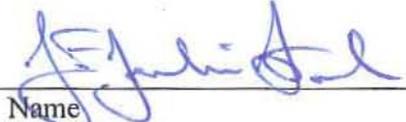
17.9. Recording of Memorandum. Concurrent with the execution of this Agreement, the parties shall execute, acknowledge and record a Memorandum of Agreement in the official records of Riverside County, California, in the form attached hereto as Exhibit G (the "Memorandum"). BrightSource may record the Memorandum at any time after the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA  
Jeffrey Kightlinger  
General Manager

BRIGHTSOURCE ENERGY, INC.,  
a Delaware corporation

By:   
Ralph T. Hicks  
Manager, Real Property Development  
and Management Group

By:   
Name  
Title

APPROVED AS TO FORM:  
Karen L. Tachiki  
General Counsel

By:   
John Clairday  
Sr. Deputy General Counsel

**Exhibit A**  
Riverside County - "Desert Land"

**Parcel 1:**

The Northwest Quarter and the South Half of the North Half of the Northeast Quarter of Section 21, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

**Parcel 2:**

The West Half of the Northeast Quarter of the Southeast Quarter of Section 16, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof. Excepting therefrom ½ interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

**Parcel 3:**

The North Half of the Southeast Quarter of the Southeast Quarter and the West Half of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 16, and the North Half of the Northeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of Section 21, all in Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom ½ interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

**Parcel 4:**

The Southwest Quarter and the Northwest Quarter of the Southeast Quarter and the North Half of the Southwest Quarter of the Southeast Quarter of Section 16, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom ½ interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

Parcel 5:

The South Half of the South Half of the Southeast Quarter of Section 16, Township 8 South Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom  $\frac{1}{2}$  interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

Parcel 6:

The East Half of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 16, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom  $\frac{1}{2}$  interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

Parcel 7:

The Northwest Quarter of Section 16, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, oilshale, coal phosphate, sodium, gold, silver and all other mineral deposits, as reserved by the State of California, by Patent recorded January 12, 1960 as instrument no. 2643 of official records.

Parcel 8:

The Southwest Quarter of the Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 15, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom 50% of all oil, gas, minerals, uranium and other hydrocarbon substances in and under said land, as reserved by Ranch Development Corporation in deed recorded October 13, 1960 as instrument no. 80656 of official records. Also excepting therefrom 50% of all oil, gas, mineral, uranium and other hydrocarbon substances in and under said land, as reserved by Texas Mining & Engineering Corporation, in deed recorded August 29, 1962 as instrument no. 81363 of official records.

Parcel 9:

The Southeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 16, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Excepting therefrom  $\frac{1}{2}$  interest in all oil, gas and other hydrocarbon of a kindred nature by whatever name or names called, together with all minerals in or under the real property herein described, together with all rights to explore for and remove the same, the exclusive right to maintain shafts, pipes and other means of connections to explore for and remove like substances in other areas in and through the subsurface as reserved by Ava, Inc., a corporation, by deed recorded December 29, 1958 as instrument no. 93140 of official records.

Parcel 10:

The Northwest Quarter of the Northwest Quarter of the Northeast Quarter of Section 21, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 11:

The Southeast Quarter of Section 28, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 12:

The South Half of the Northeast Quarter of Section 21, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the Official Plat Thereof.

Parcel 13:

Section 20, Township 8 South, Range 21 East, San Bernardino Base And Meridian, according to the official plat thereof.

Parcel 14:

The South Half of Section 21, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 15:

Section 22, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 16:

The West Half and the West Half of the Southeast Quarter of Section 23, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 17:

The West Half of the East Half and the West Half of Section 26, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 18:

Section 27, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 19:

The Northeast Quarter and the West Half of Section 28, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 20:

The North Half of Section 29, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 21:

Section 33, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 22:

Section 34, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

Parcel 23:

The West Half of the Northeast Quarter and the West Half of Section 35, Township 8 South, Range 21 East, San Bernardino Base and Meridian, according to the official plat thereof.

**Exhibit B**

**Map of the Property**

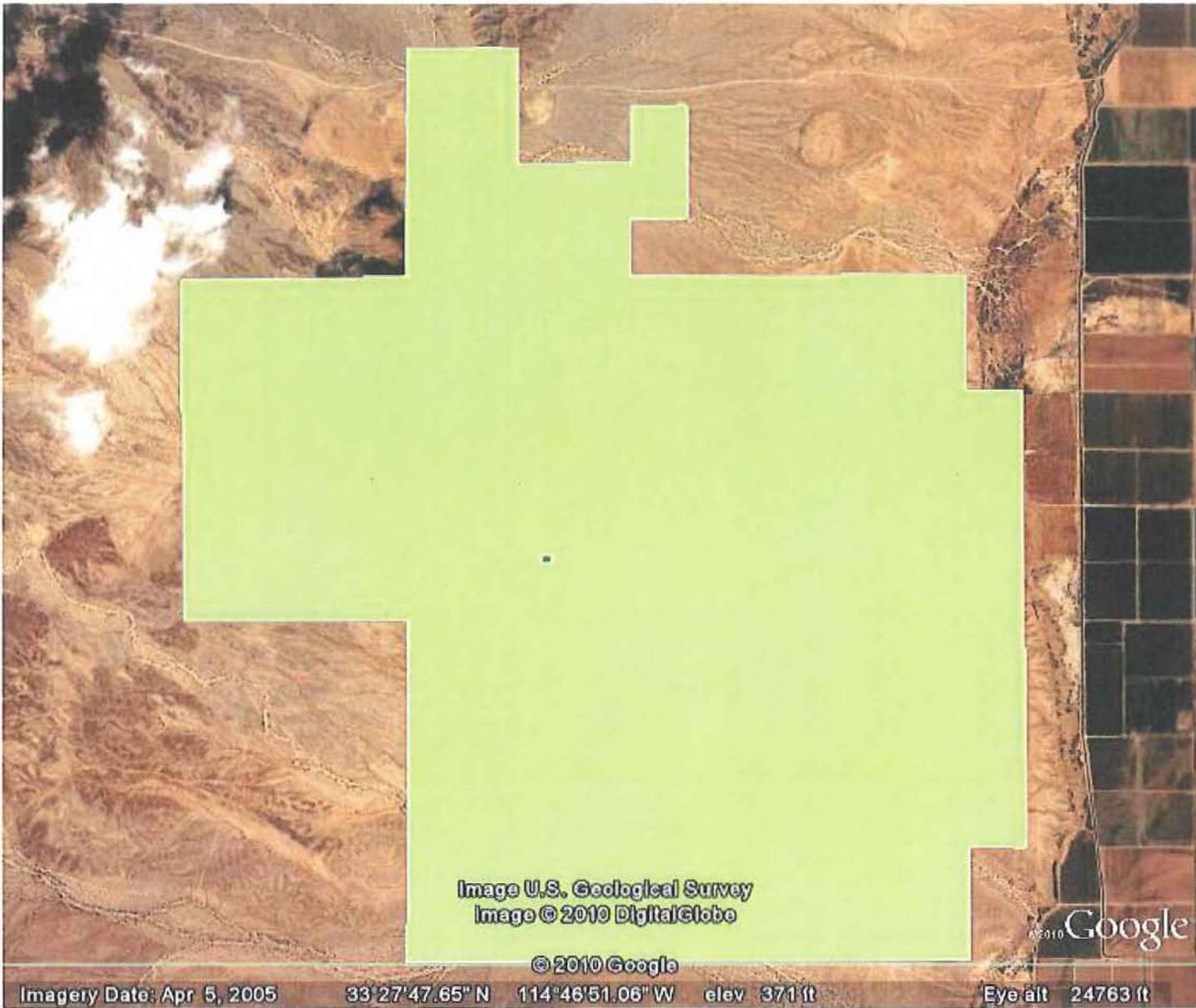


Image U.S. Geological Survey  
Image © 2010 DigitalGlobe

© 2010 Google

© 2010 Google

Imagery Date: Apr 5, 2005

33°27'47.65" N 114°46'51.06" W elev 371 ft

Eye alt 24763 ft

**Exhibit C**  
**Lease Agreement**

See attached

## GROUND LEASE AGREEMENT

This GROUND LEASE (this "Ground Lease"), is dated as of \_\_\_\_\_, 2010 ("Effective Date") by and between METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public entity, ("Owner") and BRIGHTSOURCE ENERGY, INC., a Delaware corporation ("Tenant").

### RECITALS

Owner is a public agency organized and existing pursuant to the Metropolitan Water District Act (West's Annotated Code Appendix Section 105 et seq.). Tenant is a Delaware Corporation engaged in the business of constructing and operating solar power generating plants. As part of its business Tenant desires to enter into a Ground Lease with Owner to construct, maintain and operate a solar thermal generation facility on a portion of real property acquired by Owner from the San Diego Gas & Electric Company.

For and in consideration of the payment of rent, taxes, and other charges, and the performance of all the covenants and conditions herein provided to be observed or performed by Tenant, and subject to existing liens, charges, encumbrances, covenants, conditions, restrictions, easements, rights of way of record, Owner hereby leases to Tenant, and Tenant hereby hires from Owner, the real property in the County of Riverside, State of California, more particularly described in Exhibit A, and shown on Exhibit B, attached hereto and incorporated herein by reference (the "Site", as more particularly defined in Section 1.26).

Pursuant to California law, jurisdiction over the licensing of the Project is vested in the California Energy Commission ("CEC"), which acts as the lead agency for purposes of the California Environmental Quality Act. The CEC certified the final environmental document and issued its final decision approving certification of the Project on \_\_\_\_\_ and Owner's Board of Directors acting as a responsible agency approved the Project on \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, hereby agree as follows:

1. Definitions. For all purposes of this Ground Lease the following terms shall have the meanings assigned to them in this Section, and include the plural as well as the singular.

1.1 "Affiliate" means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the foregoing, "control", "controlled by" and "under common control with" with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management

and policies of such Person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

1.2 **"Business Day"** means any day other than Saturday or Sunday or a legal holiday observed by the State of California, which day begins at 7:00 a.m. Pacific Prevailing Time.

1.3 **"Casualty"** means any loss or destruction of or damages to the Facility or the Site resulting from any act of God, fire, explosion, earthquake, accident or the elements, whether or not covered by insurance and whether or not caused by the fault or negligence of either Party, or such Party's employees, agents, contractors, or visitors.

1.4 *[deleted]*

1.5 *[deleted]*

1.6 **"Environmental Laws"** means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law, guideline or informal policy position, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture of any Hazardous Materials regulated thereunder, now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or Release of any Hazardous Materials to be provided to any Person), including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, et seq.); and any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.).

1.7 **"Environmental Liability"** means any action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the Occupational Safety and Health Act or similar laws relating to safety of employees) arising under or related in any way to the Environmental Laws or which seeks to impose liability for (a) noise; (b) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (c) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (d) exposure to or contamination by Hazardous Materials; (e) the safety or health of employees or (f) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An "Environmental Liability" includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress

violations of an applicable permit, license, or regulation as alleged by any governmental authority.

1.8 **"Environmental Permit"** means any permit, license, approval or other authorization under any applicable Environmental Laws.

1.9 **"Facility"** means a renewable energy facility and related Utilities, improvements, equipment, facilities, appurtenances and other improvements existing on the Effective Date and/or to be developed, constructed, owned, operated and maintained on the Site, including but not limited to all structures, machinery, equipment, meters, fixtures, interconnections, ancillary equipment and materials, and all additions, expansions and modifications thereto as may be located on the Site.

1.10 **"Financial Closing"** means the closing of permanent financing for the construction of the Facility, which shall be deemed to occur on the first date that Tenant has the right to draw upon the loan proceeds of its construction loan for the Facility.

1.11 **"Force Majeure"** means all events that are beyond the control of the Party affected, including without limitation flood, earthquake, storm, lightning, fire, explosion, war, riot, civil disturbances, strikes, and sabotage. Failure to obtain any required regulatory approval shall not constitute a Force Majeure event.

1.12 **"Hazardous Materials"** means any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, state, county, regional or local authority, or any Environmental Laws, or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Facility, the Site or of property adjacent to the Facility, the Site, including but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, or any substance identified, defined or listed as a "toxic pollutant," "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutant or contaminant," "hazardous chemical," or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.

1.13 **"Lease Year"** means each consecutive 12 month period during the Term commencing with the first day of the first full calendar month following the Rent Commencement Date (or if the Rent Commencement Date shall occur on the first day of a calendar month, commencing on the Rent Commencement Date) and ending on the last day of the calendar month completing such 12 month period.

1.14 **"Official Records"** means the Official Records of Riverside County, California.

1.15 **"Option Agreement"** means that certain Agreement for Environmental Review and Option to Lease dated as of \_\_\_\_\_, 2010 by and between Owner and Tenant.

1.16 **"Owner's Parties"** means Owner and each of its officers, directors, partners, members, Affiliates, lenders, employees, shareholders, attorneys, lessees (other than Tenant), sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.17 **"Parcel"** means that certain real property located in Riverside County, California, consisting of each parcel particularly described on Exhibit A attached hereto, with each Parcel consisting of the approximate acreage listed in Exhibit A attached hereto and being more specifically described in Exhibit B attached hereto.

1.18 **"Party"** or **"Parties"** means Owner and/or Tenant.

1.19 **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

1.20 **"PPA" or "PPAs"** means one or more Power Purchase Agreements entered into between Tenant and a third party customer, under which Tenant has agreed to sell to the customer the electrical power generated by all or a portion of the Facility for a specified term.

1.21 **"Release"** means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material whether on, under or migrating to or from the property of any Party.

1.22 **"Rent Commencement Date"** means the Effective Date of this Ground Lease.

1.23 **"Rent Payment Term"** means the period of time commencing with the Rent Commencement Date and expiring at the end of the Term.

1.24 **"Shared Facilities"** means those facilities subject to any Shared Facility Agreement, which are owned and used in common by multiple assignees of portions of the Site, and located in common areas defined by a separate lease assignment to such assignees as co-tenants.

1.25 **"Shared Facilities Agreement"** means any Shared Facilities Agreement which may from time to time be entered into by and between Tenant and/or any of Tenant's assignees pursuant to Section 22, pertaining to the common ownership and operation of certain portions of the Facility.

1.26 **"Site"** means collectively, all of the Parcels covered by this Ground Lease.

1.27 **"Tenant's Parties"** means Tenant, its officers, directors, partners, members, Affiliates, lenders, employees, shareholders, attorneys, lessees, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.28 **"Transfer"** means a transfer or conveyance of Owner's interest in the Site and/or this Ground Lease.

1.29 **"Utilities"** means the services and related improvements, equipment and facilities necessary for the operation of the Facility, including, but not limited to, natural gas, electrical power, water, storm water, sanitary sewer, roads, telephone and telecommunication services, improvements, equipment and facilities.

## 2. Lease; Term.

2.1 Lease of Site; Term. Owner hereby leases the Site to Tenant, and Tenant hereby leases the Site from Owner, upon the terms and conditions hereof, for a term which shall commence on the Effective Date, and unless terminated early pursuant to Sections 2.3, 9.2, 10, 11, 13.2, 13.4 or 16.2 below, expire on the date that is 40 years after the Effective Date (the **"Term"**).

2.2 No Mineral Rights. This Ground Lease does not demise or lease to Tenant any oil, gas or minerals in place underneath the surface of the Site or the right to extract and remove the same, which oil, gas, minerals and right are reserved to, and retained by, Owner. During the Term, Owner may not use, or permit the use of the Site from the surface to a depth of 500 feet below the surface, for the purpose of exploring for, extracting, producing or mining such oil, gas or minerals. Owner may explore for, extract or produce oil, gas and minerals from the Site in a manner that does not interfere with Tenant's use of the Site and utilizes a method, such as "directional drilling" which does not require use of the Site to a depth of 500 feet below the surface.

2.3 Termination Right. Tenant shall have the right to terminate this Ground Lease at any time through the third (3<sup>rd</sup>) anniversary of the Effective Date by giving Owner written notice of termination, which notice shall specify a termination date not less than 30 days following the date of the notice. Following the specified termination date, Tenant shall have no further rights or obligations under this Ground Lease, except as otherwise specifically set forth herein.

## 2.4 Water.

(a) Tenant acknowledges that the Site is not within the service area of any municipal or commercial water supplier. Tenant further acknowledges that the Site is located within the Colorado River accounting surface described by the U. S. Bureau of Reclamation (*see* Federal Register, Vol. 73, pp. 40916-40932 (July 16, 2008)), and that any groundwater extracted from the Site may be deemed to be Colorado River water subject to the authority and control of the federal government pursuant to the Boulder Canyon Project Act. Owner is a metropolitan water district organized for the purpose of acquiring and delivering water supplies to its member public agencies to provide public water supplies for its service area in southern California. Owner has a contract with the federal government pursuant to Section 5 of the Boulder Canyon Project Act for the delivery of Colorado River water. Owner further has the authority to serve water to private corporations for use in connection with the generation of electric power at plants located outside of Owner's service area, provided that, among other things, a major portion of

the power generated is used either directly or indirectly by exchange within Owner's service area.

(b) Subject to the terms of this Section 2.4, Tenant is granted the right to extract from, and use on, the Site an amount of groundwater not to exceed six hundred (600) acre feet of water each Lease Year. Tenant shall extract the water at its sole cost and expense, and comply with all applicable laws, rules and regulations relating to the extraction of the water. Owner makes no representations or warranties as to the available quantity or quality of the water, and Tenant agrees that it shall extract the water on an "as-is," "where-is" basis. Tenant shall be responsible for all costs associated with extracting the water from the Site, including, but not limited to, acquiring necessary permits for the installation, operation, and maintenance of the wells, renovating existing wells and pipelines, installing new wells and pipelines in locations acceptable to Owner, electrical costs, and the cost to install meters on wells to measure the quantity of water Tenant extracts. Tenant shall monthly report to Owner, within ten days of the end of each month, the amount of groundwater extracted from the Site, and shall retain reasonable records of the groundwater pumping for each Lease Year for a period of three years.

(c) In the event that the U. S. Bureau of Reclamation, or any other agency with jurisdiction over the water, determines that the groundwater pumping constitutes a diversion or use of Colorado River water, Tenant shall retroactively and thereafter purchase the groundwater pumped from the Site from Owner by exchange or an equal amount of Owner's non-Colorado River water in accordance with Owner's authority to deliver water to Tenant for electric power generation purposes. The purchase price per acre-foot for such groundwater shall be equal to the sum of the following rate and charge components as in effect and applicable to Owner's member agencies at the time of delivery: (i) [REDACTED] a charge set by Owner and updated from time to time that converts certain fixed charges and other revenue sources to a single volumetric charge for purposes of collecting those revenues from non-Member Agencies. Owner shall invoice Tenant for the amount due for the water use within thirty (30) Business Days following receipt of Tenant's monthly groundwater extraction report.

(d) Tenant may elect to use a water source other than groundwater extracted on the Site, provided that such alternative water source shall not directly or indirectly (e.g., through a use of water that would provide return flow credits to the Colorado River) involve the use of Colorado River water. In the event that the U. S. Bureau of Reclamation, or any other agency with jurisdiction over the water, determines that the alternative water supply involves the use of Colorado River water, Tenant shall retroactively and thereafter pay to Owner the purchase price of the water as calculated in this Section 2.4. All wells, except those actively used by or for the Facility, shall be properly closed in accordance with all applicable laws, rules and regulations and all wells existing on the Site shall be metered.

3. Severance. The Parties agree that all improvements at any time constructed by or for Tenant on the Site, whether prior to the Effective Date or after same, and all equipment at any time acquired by or for Tenant and located on the Site, including (without limitation) the Facility, are hereby severed by agreement and intention of the Parties and shall remain severed

from the Site shall be considered with respect to the interests of the Parties hereto as the property of Tenant or a Financing Party (as defined in Section 18.1 below) designated by Tenant, and, even though attached to or affixed to or installed upon the Site shall not be considered to be fixtures or a part of the Site and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Site by Owner. Owner waives any rights it may have under the laws of the State of California arising under this Ground Lease or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the Facility or any other equipment or improvements constructed or acquired by or for Tenant and located on the Site.

#### 4. Rent.

4.1 Rent. On the Rent Commencement Date and on each quarterly anniversary of the Rent Commencement Date thereafter (each such payment date, a "Rent Payment Date"), Tenant shall pay Owner quarterly rent ("Basic Rent"), for the Site in an amount equal to the product of (i) [REDACTED] and (ii) the number of acres in the Site, as determined by the surveyed plat plan and the legal description prepared pursuant to Section 3.1.4 of the Option Agreement, subject to adjustment as provided in Section 4.2 below.

4.2 Adjustments to Basic Rent. The Basic Rent shall be adjusted and increased for each Lease Year of the Rent Payment Term after the first Lease Year, commencing at the beginning of the second Lease Year and at the beginning of each succeeding Lease Year by an annual percentage increase of [REDACTED] such that the Basic Rent for each new Lease Year after the first is equal to [REDACTED] of the Basic Rent of the preceding Lease Year.

4.3 Late Payment. Tenant acknowledges that the late payment of Basic Rent will cause Owner to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges that may be imposed upon Owner. Accordingly, if any Basic Rent is not received by an Owner within 20 Business Days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Owner a one-time late charge equal to [REDACTED] for each such overdue amount. Owner and Tenant agree that such late charge represents a fair and reasonable estimate of the costs Owner will incur by reason of such late payment. Acceptance of such late charge by Owner shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

4.4 Interest. Any monetary payment due Owner hereunder, other than late charges, not received by Owner within 20 Business Days after such payment shall be due shall bear interest from the 21<sup>st</sup> Business Day after the due date until the date paid. The interest charged shall be equal to the greater of 8% per annum and the maximum rate allowed by law. The interest payable hereunder is in addition to the potential late charge provided for in Section 4.3.

4.5 Megawatt Capacity Fee. As additional rent, Tenant shall pay Owner, for each Lease Year, on each anniversary of the Rent Commencement Date, a "Megawatt Capacity Fee"

equal to the product of (i) [REDACTED]

[REDACTED] For example, a capacity sale of [REDACTED] for an entire Lease Year would generate a Megawatt Capacity Fee of [REDACTED]; alternatively, two capacity sales of [REDACTED] each, one for the first six months of such Lease Year, the other for the final six months of such Lease Year would generate a Megawatt Capacity Fee of [REDACTED]; and finally, if an agreement provided for an increase of initial capacity from [REDACTED] half way through the Lease Year, the multiplier would be [REDACTED] for the first six months and [REDACTED] for the final six months generating a Megawatt Capacity fee of [REDACTED]. Tenant shall be responsible for ensuring accuracy of all Megawatt Capacity Fee payments and shall maintain all supporting documentation for a period of three (3) years following the termination of this Ground Lease. To the extent necessary to verify Megawatt Capacity Fee calculations, upon fifteen days' notice from Owner, Owner shall have the right to audit Tenant's records, including applicable PPAs or similar agreements, and Tenant shall reasonably cooperate with any such audit and shall permit access to its books, records and accounts as may be reasonably necessary to conduct any such audit.

4.6 Financial Close Milestone Payment. As additional consideration, Tenant shall pay Owner a one-time milestone payment of [REDACTED] to be paid at the Financial Closing.

5. Further Assurances. Owner and Tenant agree to execute and deliver all further instruments and documents, including, without limitation, a shared facilities agreement, if necessary, and take any further action that may be reasonably necessary to effectuate the purposes and intent of this Ground Lease. Owner shall not grant or convey any easement or other interest that, if used or enjoyed in accordance with its terms, would interfere with Tenant's operation, use and enjoyment of the Facility and/or the Site.

6. Surrender of Site. Upon expiration of the Term, Tenant shall surrender the Site to Owner as provided in this Section 6. Within 180 days after the termination or expiration of the Term, Tenant shall commence to decommission, dismantle and remove the Facility and all other property of Tenant located on the Site, returning the Site to its condition as of the Effective Date including removal of all Facility infrastructure, including, but not limited to and to the extent reasonably practicable, foundations, footings, piping and conduit; provided, that Tenant shall not be required to significantly alter the grade of the Site. All such decommissioning, dismantling, and removal activities shall be completed within eighteen (18) months of the termination or expiration of the Term. Owner hereby grants to Tenant and Tenant's Parties a license to enter upon the Site to perform the activities required to be performed by Tenant pursuant to this Section 6, which license shall be effective commencing upon the date of termination or expiration of the Term and shall terminate upon the date on which such decommissioning, dismantling and removal activities are complete or eighteen (18) months after the termination or expiration of the Term. In the event Tenant fails to dismantle and remove the Facility, Owner may complete such activities and Tenant agrees to reimburse Owner for all reasonable direct and incidental costs.

7. Nontermination. Except as specifically provided to the contrary in this Ground Lease, this Ground Lease shall not terminate, nor shall Tenant's interest in the Site or the Facility be extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest or estate in the Site or any other property interest, in whole or in part, by any cause or for any reason whatsoever, including, without limitation, the following: (a) destruction of all or any part of the Facility, the Site or the taking of the Facility, or the Site or any portion thereof by condemnation, requisition, eminent domain or otherwise, (b) any prohibition, limitation or restriction of Tenant's Parties' or any Financing Party's use of all or any part of the Site or of Tenant's Parties' or any Financing Party's use of the Facility, or the interference of such use by any Person, or any eviction by paramount title or otherwise, (c) any inadequacy, incorrectness or failure of the description of the Site or any other property or rights intended to be granted or conveyed by this Ground Lease, (d) insolvency, bankruptcy, reorganization or similar proceedings by or against either Party, or (e) any other reason whatsoever, whether similar or dissimilar to any of the foregoing.

8. Possession and Quiet Enjoyment. As long as no Tenant Event of Default under this Ground Lease has occurred and is continuing beyond any applicable cure period, and subject to the provisions of this Ground Lease, Owner covenants and agrees that Tenant shall enjoy quiet possession of the Site without any disturbance from Owner or any Person claiming through Owner. In no event shall Owner permit or suffer to exist, without Tenant's prior written consent, which may be withheld in Tenant's discretion, any tax lien or other encumbrance on or against the Facility or the Site other than those title matters that were not objected to by Tenant as provided in the Option Agreement or, if objected to, are those which Tenant has thereafter elected to accept the lease of the Property subject to. Upon either Party's discovery of any such lien, such Party shall (a) promptly give written notice thereof to the other Party, and (b) Owner shall cause the same to be discharged of record or deliver to Tenant appropriate security for payment within 30 days after the date Owner receives notice of filing of same, either by payment, deposit or bond. If Owner shall fail to discharge any such lien(s) within such period, in addition to any other rights or remedy hereunder, Tenant may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due by deposit in court or bonding. Any amount so paid or deposited by Tenant, and all costs and other expenses related thereto, including reasonable attorneys' fees, in defending any action or in procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon at the prime interest rate of Bank of America NT&SA, or its successor, plus one and one-half percent (1 ½%) per annum (subject to and limited by applicable usury laws) from the date of payment or deposit, until repaid to Tenant, shall be payable by Owner to Tenant upon demand.

9. Use of Site; Development of Facility.

9.1 Use. During the Term, Tenant shall have exclusive use of the Site. Tenant may use the Site for purposes related to due diligence investigations and studies, and the construction, use, operation, repair, ownership, replacement, expansion, modification, upgrade or maintenance of the Facility and for any other lawful use. Owner shall not enter the Site during the Term, unless Owner (A) gives reasonable notice of its intention to visit the Site, (B) is admitted to the Site by Tenant's representative, (C) is transported on Site by Tenant in Tenant's or Tenant's

representative's vehicles exclusively, (D) is escorted by Tenant's representative during the entirety of Owner's visit and (E) at all times acts in accordance with Tenant's rules, regulations and instructions for Site visitors.

9.2 Construction of the Facility. Tenant shall determine, after Financial Closing, whether and when to construct (or cause the construction of) the Facility on the Site and within in its sole discretion and nothing herein shall obligate Tenant to construct the Facility on the Site. Should Tenant seek to obtain any permits, licenses, exemptions or certifications in connection with the Facility, Owner agrees to cooperate fully and promptly with Tenant in such efforts. To the extent permitted by law, all permits, licenses, exemptions and certifications for the construction of the Facility shall be in the name of and for the benefit of Tenant or a Person designated by Tenant. Owner has no obligation to upgrade, update, expand, replace, make additions to, or otherwise modify the Facility. Owner shall have the right to terminate this Ground Lease upon ninety (90) days' notice to Tenant in the event Tenant shall not have commenced construction of the Facility within thirty-six (36) months from the Rent Commencement Date.

9.3 Mechanic's Liens. Tenant shall not suffer or permit to be enforced against the Site, or any part thereof, and shall indemnify and hold Owner and the Site harmless for, from and against any mechanics', materialman's, contractor's or subcontractor's liens arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement, or improvement done by or on behalf of Tenant, but Tenant shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Site. If Tenant shall in good faith contest the validity of any such lien, claim, or demand, then Tenant shall, at its expense, defend itself and Owner against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest Tenant shall at the request of Owner provide such security and take such steps as may be required by law to release the Premises from the effect of such lien. Upon the discovery by Tenant or Owner of any recorded mechanics', materialman's, contractor's or subcontractor's lien against the Premises or any portion thereof, Tenant or Owner, as the case may be, shall (a) promptly give written notice thereof to the other Party; and (b) Tenant shall cause such lien to be released of record within 60 days after Tenant receives notice thereof, either by payment, deposit or bond. The Parties hereby acknowledge that the Site is public property, which will affect the assertion of mechanics lien rights in accordance with California law.

10. Liability Insurance. Tenant has furnished insurance coverage evidenced by the Certificate(s) of Insurance attached hereto as Exhibit E. A review of the insurance coverage will be made every year in order to adjust the coverage to be commensurate with the appropriate insurance coverage existing for similar type leaseholds at the time of review. Failure to maintain a current Certificate of Insurance on file with Owner evidencing such insurance shall be cause for termination, subject to the notice and cure provisions of Section 13.1(b). Insurance coverage shall remain in effect throughout the Term of this Ground Lease and throughout any renewals.

Said insurance shall meet the following requirements:

10.1 General Liability Insurance. General liability in the amount of [REDACTED] per occurrence with a [REDACTED] aggregate. If such General Liability coverage is written on a claims-made form:

(a) The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

(b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

(c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

(d) A copy of the claims reporting requirements must be submitted to Owner for review.

(e) Owner shall be named as an additional insured on the policy.

10.2 Workers' Compensation Coverage. Workers' compensation coverage with California statutory limits, and employer's liability in the amount of [REDACTED]. Such policy shall be endorsed with a waiver of subrogation in favor of Owner.

10.3 Auto Liability Coverage. Auto liability in the amount of [REDACTED] each accident. Owner shall be named as additional insured on the automobile liability policy.

10.4 Additional Endorsements. All liability policies obtained by Tenant shall:

(a) Endeavor to obligate the insurance carrier to provide to Owner not less than a 30-day notice of cancellation affecting the coverage of the policies.

(b) Provide that Tenant's required insurance is primary to any self-insurance or insurance of Owner.

10.5 Builder's Risk and Property Insurance. Tenant shall, at its own cost and expense, purchase and maintain Builders Risk Insurance from the commencement of construction until final acceptance of the Facility (including commissioning, testing and start-up), covering physical loss or damage to the Facility, to the extent available in the commercial insurance market at reasonable prices, in an amount equal to the full completed value of the Facility except that: (i) in connection with earthquake risk, only the tower and power block components of the Facility shall be insured (ii) in connection with flood risk, only the heliostat field shall be insured, and for the avoidance of doubt, if Tenant elects not to rebuild the Facility, Tenant shall apply the proceeds of the insurance program to Tenant's obligations under this Ground Lease, including but not limited to Basic Rent and decommissioning, dismantling and removal of the Facility. Off-site storage and inland transit coverage shall be written with limits commensurate with the values at risk. Deductibles shall not exceed [REDACTED] per occurrence. Following final

acceptance of the Facility, Tenant shall secure (x) Property insurance providing full replacement coverage as described above, including the reference to earthquake and flood insurance, and (y) business interruption insurance covering anticipated profit plus fixed and continuing expenses, in each case with a deductible not exceeding 60 days, arising from an insured physical loss or damage to the Facility, and for the avoidance of doubt, if Tenant elects not to rebuild the Facility, Tenant will apply the proceeds of the insurance program to Tenant's obligations under this Ground Lease, including but not limited to Basic Rent, Megawatt Capacity Fee and decommissioning, dismantling and removal of the Facility. In the event that during the period from the commencement of construction until final acceptance of the Facility (including commissioning, testing and start-up) such earthquake and flood insurance is unavailable in the commercial market at reasonable prices, Tenant shall post a bond or cash in an amount equal to the sum of 18 months of the then current Basic Rent plus an estimated amount necessary to complete Tenant's decommissioning, dismantling, and removal obligations set forth in Section 6.

10.6 Subrogation. Owner shall have no liability to Tenant or to any insurer, by way of subrogation or otherwise, on account of any loss or damage to Tenant's respective property, or the Project, regardless of whether such loss or damage is caused by the negligence of Owner or Tenant, arising out of any of the perils or casualties insured against by the property and/or liability insurance policies carried. The insurance policies obtained by Tenant pursuant to this Agreement shall permit waivers of subrogation that the insurer may otherwise have against the non-insuring Party. If such an endorsement is not available and the Tenant's insurer pursues separate legal action against the Owner, the Tenant shall be responsible for all legal fees and payment of any funds Owner is legally held obligated to pay.

10.7 Carrier Ratings. All carriers must have an AM Best rating of not less than A:VII for flood and earthquake coverages and an AM Best rating of at least A:X for all other coverages. The exception to these ratings is for the State Compensation Fund (Workers' Compensation), which is unrated.

11. Damage or Destruction of Facility. If the Facility or any part thereof is damaged or destroyed by any Casualty, Tenant shall have the right, but not the obligation, to repair and restore the Facility or to construct and operate such new facility as it deems appropriate. If the Facility is damaged or destroyed and Tenant elects not to repair or restore the Facility or to construct a new facility, Tenant shall have the right to terminate this Ground Lease, without penalty, effective as of the date of Casualty by giving written notice of termination to Owner. If Tenant exercises its termination right as provided in the preceding sentence, Tenant shall surrender the Site as provided in Section 6 above and shall have the same obligations set forth in Section 6 to complete all decommissioning, dismantling, and removal activities within eighteen (18) months of such termination date.

12. Liabilities.

12.1 General.

(a) Tenant shall indemnify, defend and hold Owner and Owner's Parties harmless from any and all third party claims, losses, expenses, liabilities, actions, suits, or

judgments for personal injury or property damage (collectively, "Losses") by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Tenant's or Tenant's Parties' ownership, operation, use or maintenance of the Facility or the Site; (ii) the nonfulfillment or nonperformance of any covenant or agreement of Tenant or any Tenant Party in this Ground Lease; (iii) the negligence or willful misconduct of Tenant or any Tenant Party in connection with the transactions contemplated by this Ground Lease; (iv) any Release of Hazardous Materials on the Site caused or permitted by Tenant or any Tenant Party; or (v) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Tenant or any Tenant Party.

(b) Owner. Owner shall indemnify, defend and hold Tenant and Tenant's Parties harmless from any and all Losses to the extent arising prior to or after the Effective Date by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Owner's or Owner's Parties' ownership, operation, use or maintenance of the Facility or the Site; (ii) the nonfulfillment or nonperformance of any covenant or agreement of Owner or any Owner Party in this Ground Lease; (iii) the negligence or willful misconduct of Owner or any Owner Party in connection with the transactions contemplated by this Ground Lease; (iv) the inaccuracy of any representation or warranty of Owner contained in this Ground Lease; (v) any Release of Hazardous Materials on the Site caused or permitted by Owner or any Owner Party; or (vi) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Owner or any Owner Party.

(c) The provisions of this Section 12.1 shall survive the expiration or termination of the Term, and, as to Owner's obligation to indemnify, defend, and hold Tenant and Tenant's Parties harmless, shall survive Owner's Transfer with respect to any occurrence prior to such Transfer.

12.2 Consequential Damages. Notwithstanding anything to the contrary in this Ground Lease, none of the Parties hereto shall be liable to the other for consequential damages, including but not limited to loss of use or loss of profit or revenue.

### 13. Default.

13.1 Events of Default. The following events shall be deemed to be events of default by Tenant ("Tenant Events of Default") under this Ground Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing Tenant from complying with the terms of this Ground Lease:

(a) Failure to pay any payment required to be made hereunder, including taxes or any other sum to be paid hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Tenant by Owner.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 90 days after due written notice thereof from

Owner; or if such failure cannot reasonably be cured within the said 90 days and Tenant shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

13.2 Owner's Remedies. Upon the occurrence of any Tenant Event of Default, Owner may, at its option, and in addition to and cumulatively of any other rights Owner may have at law or in equity or under this Ground Lease, (a) cure the Tenant Event of Default on Tenant's behalf, in which event Tenant shall reimburse Owner on demand for all sums so expended by Owner, (b) terminate this Ground Lease by notice to Tenant and in conformity with procedures required hereby and by applicable law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Owner shall have all remedies available at law or in equity, and should it be necessary for Owner to take any legal action in connection with such enforcement, Tenant shall pay Owner all reasonable attorneys' fees so incurred, all without prejudice to any remedies that might otherwise be used by Owner for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

13.3 Owner Events of Default. The following events shall be deemed to be events of default by Owner ("Owner Events of Default") under this Ground Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing Owner from complying with the terms of this Ground Lease:

(a) Failure to pay any payment required to be made hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Owner by Tenant.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 180 days after due written notice thereof from Tenant; or if such failure cannot reasonably be cured within the said 180 days and Owner shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Any act or omission of Owner that in any way, directly or indirectly, impacts, affects or impairs Tenant's ability to operate and/or the operation of the Facility.

13.4 Tenant's Remedies. Upon the occurrence of any Owner Event of Default, Tenant may, at its option, and in addition to and cumulatively of any other rights Tenant may have at law or in equity or under this Ground Lease, (a) cure the Owner Event of Default on Owner's behalf, in which event Owner shall reimburse Tenant on demand for all sums so expended by Tenant, (b) terminate this Ground Lease by notice to Owner and in conformity with procedures required hereby and by applicable law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Tenant shall have all remedies available at law or in equity, and should it be necessary for Tenant to take any legal action in connection with such enforcement, Owner shall pay Tenant all

reasonable attorneys' fees so incurred, all without prejudice to any remedies that might otherwise be used by Tenant for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

14. Governing Law. This Ground Lease and all provisions hereof, shall be governed by and interpreted in accordance with the laws of the State of California. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Ground Lease shall be tried in a court of competent jurisdiction in Los Angeles County.

15. Force Majeure.

15.1 Force Majeure. The performance of each Party's respective obligations under this Ground Lease, other than failure or delay in payment of obligations, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

15.2 Resumption of Performance. The Party whose performance is suspended, prevented or delayed by Force Majeure shall promptly notify the other Party of such occurrence and its estimated duration. Subject to any rights of termination under this Ground Lease, such Force Majeure shall be promptly remedied, if and to the extent reasonably possible.

16. Condemnation.

16.1 If at any time the Site or any portion thereof is condemned or transferred in lieu of condemnation, the net proceeds of such condemnation or transfer shall be divided between Owner and Tenant (or Tenant's designee) in the proportions specified in the condemnation award or agreement of transfer or, if not so specified, in proportion to the fair value of Owner's and Tenant's respective interests in the Site provided that to the extent that the net proceeds of any condemnation or transfer in lieu of condemnation are attributable to the Facility or improvements constructed by or on behalf of Tenant on the Site, such proceeds shall be paid solely to Tenant or Tenant's designee, with Owner receiving any proceeds attributable solely to the residual value of the fee estate of the Site. For the purpose of this Section 16 the net proceeds of a condemnation or transfer in lieu of condemnation shall mean the total proceeds of such condemnation or transfer less the costs and expenses incurred in connection therewith (including legal fees).

16.2 If the entire Site is condemned or transferred in lieu of condemnation, the Term shall terminate at the time title vests in the condemning authority. If a portion of the Site is condemned or transferred in lieu of condemnation, the Lease shall continue in full force and effect with respect to that portion of the Site which has not been so condemned or transferred, and Basic Rent shall abate with respect to that portion of the Site which has been so condemned or transferred. Notwithstanding the foregoing, Tenant may terminate this Ground Lease without penalty by giving written notice of termination to Owner if, in Tenant's discretion, the Site is not suitable for Tenant's intended use following such condemnation or transfer in lieu thereof.

17. Maintenance Responsibilities of Parties. No Party shall have any duty or responsibility to the other Party in respect of the Site or the use, maintenance or condition thereof except such obligations of such Party as are specifically set forth in this Ground Lease. Tenant shall at all

times keep Facility in compliance with all applicable federal, state, and local laws and regulations.

18. Mortgage of Tenant's Interest.

18.1 Tenant intends to finance a portion of the cost of the Facility, with one or more equity investors, financial institutions, leasing companies, institutions or Affiliates or subsidiaries thereof or other financing parties (each a "Financing Party," collectively, the "Financing Parties") and in connection therewith Tenant intends to enter into various agreements and execute various documents relating to such financing, which documents may, among other things, assign this Ground Lease to a Financing Party, grant a sublease in the Site and a lease of the Facility from such Financing Party to Tenant, grant the Financing Parties a sublease or other real property interest in Tenant's interests in and to the Site, grant a first priority security interest in Tenant's interest in the Facility and/or this Ground Lease and Tenant's other interests in and to the Site, including, but not limited to any easements, rights of way or similar interests (such documents, "Financing Documents"). Owner acknowledges notice of the foregoing and consents to the foregoing actions and Financing Documents described above, and Owner agrees to execute, and agrees to cause any and all of Owner's lenders to execute, such direct agreements, subordination agreements, consents, estoppels and other acknowledgements of the foregoing as Tenant or the Financing Parties may reasonably request. Owner agrees that if requested by Tenant, Owner will furnish the Financing Parties with a counterpart of each notice or other document delivered by Owner to Tenant in connection with this Ground Lease.

18.2 Owner agrees that it shall not terminate this Ground Lease unless it has given each Financing Party at least 90 days (20 days in the case of a default in payment by Tenant) prior written notice of its intent to terminate this Ground Lease and the Financing Parties fail to cure the condition giving rise to such right of termination within such time period. Tenant shall provide Owner with a complete list of all "Financing Parties" and shall update such list with current names and contact information within 10 days of any change. Any failure on Owner's part to notify a Financing Party due to lack of listing or lack of current contact information shall not be a violation of this Ground Lease and shall not be a basis to challenge the termination of the Lease.

18.3 If the default under this Ground Lease is of such a nature that it cannot be practicably cured without first taking possession of the Facility and the Site, then Owner shall not be entitled to terminate this Ground Lease by reason of such default if and so long as the Financing Parties proceed diligently to attempt to obtain possession of the Facility and the Site pursuant to the rights of the Financing Parties under the Financing Documents and upon obtaining such possession, the Financing Parties shall proceed diligently to cure such default if such default is susceptible of being cured by the Financing Parties.

18.4 The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the Site, pursuant to Section 18.3 if and when such default is cured. If the Financing Parties, or a purchaser through foreclosure under the Financing Documents or otherwise, shall (a) acquire title to the Facility and the leasehold estate created by this Ground Lease, (b) cure all defaults which are susceptible of being cured by the Financing

Parties or such purchaser, as the case may be, and (c) assume all the obligations of Tenant hereunder, then (i) any default of Tenant which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Ground Lease, and (ii) Owner shall recognize the Financing Parties or such purchaser, as the case may be, as the Tenant under this Ground Lease.

19. Owner's Representations and Covenants.

19.1 Condition of Title; Warranty of Authority; Enforceability. Owner represents and warrants as of the Effective Date that Owner owns fee title to the Site free and clear of any lien, interest or encumbrance, subject only to documents or instruments that are of public record. At any time on or after the Effective Date Tenant may obtain for itself and/or any Financing Party, at Tenant's expense, an ALTA Extended Coverage policy of title insurance in a form and with exceptions acceptable to Tenant and/or such Financing Party in its sole discretion (the "Title Policies"). Owner agrees to cooperate fully and promptly with Tenant in its efforts to obtain the Title Policies, and Owner shall take such actions as Tenant or any Financing Party may reasonably request in connection therewith. Owner represents and warrants that (a) there are no pending or threatened claims, actions or suits affecting the Site; (b) the execution and performance of this Ground Lease by Owner does not violate any contract, agreement or instrument to which Owner is a party and Owner has not entered into any contract, agreement or instrument with respect to the Site with any third party other than Tenant; (c) the execution, delivery and performance by it under this Ground Lease have been duly authorized by all necessary action by Owner and do not violate any provision of any current law applicable to Owner, the Site or any order, judgment or decree of any court or other agency presently binding on Owner or conflict with or result in a breach of or constitute a default under any contractual obligation of Owner; and (d) this Ground Lease is the legally valid and binding obligation of Owner enforceable against it in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles relating or limiting creditors' rights generally.

19.2 Environmental. Owner represents and warrants that as of the Effective Date (a) the Site is free of known or identified Hazardous Materials, no Hazardous Materials have ever been produced or disposed upon the Site, no Release has occurred on the Site and Hazardous Materials have not migrated to the Site, (b) the Site is in compliance with all Environmental Laws, (c) the Site is not subject to any Environmental Liability, threatened Environmental Liability or alleged Environmental Liability, and (d) Owner has not received notice of any violation of Environmental Laws affecting the Site.

19.3 Mortgage of Owner's Interest. Owner shall, at its expense, on or before the initial Rent Payment Date and as a condition to Tenant's obligation to make any payment of Basic Rent, remove, or cause to be subordinated to the Ground Lease all monetary obligations that are described as exceptions to the Title Policies. Any such subordination agreement shall be in a form as may be reasonably acceptable to Tenant, which provides, among other things, that Tenant's occupancy or use of the Site in accordance with the terms of this Ground Lease will not be disturbed. If Owner has not mortgaged its interest in the Site prior to the Effective Date, upon request by Owner, Tenant shall execute and deliver to Owner a commercially reasonable

attornment agreement in connection with any proposed sale or financing of the Site or any portion thereof, pursuant to which the rights of Tenant under this Ground Lease shall be recognized by the proposed purchaser or lender and, as to such purchaser shall agree to be bound by Owner's obligations under this Ground Lease after such purchaser acquires the Site. Such document shall be in a commercially reasonable form and shall be subject to Tenant's commercially reasonable approval, except that Tenant agrees that (a) Tenant will provide copies of all notices to Owner hereunder to any lender of whom Tenant has been given written notice, which notice shall include the lender's address; and (b) Tenant will pay to any lender all amounts otherwise owing to Owner hereunder following written demand by such lender if the written demand is accompanied by a copy of an assignment of rents from Owner to such lender. Notwithstanding the foregoing, Tenant shall have no obligation to subordinate Tenant's interest under this Ground Lease to the lien of any lender and no foreclosure or trustee's sale by such a lender shall affect Tenant's rights under this Ground Lease.

20. Utilities. Tenant shall pay for all Utilities consumed by Tenant at the Site during the Term.

21. Taxes.

21.1 Covenant to Pay Taxes and Assessments. In addition to the rent and except as otherwise provided herein, Tenant shall pay and discharge or cause to be paid and discharged, all real estate taxes, general and special assessments, water and sewer rates and charges, any occupancy tax, possessory interest tax, or similar tax, and other governmental charges and levies, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever which during the Term of this Ground Lease may be levied upon, assessed, confirmed, imposed or become a lien against the Property, Tenant's possessory interest in the Property, or any Improvements thereon, or both, or any parts thereof, or become payable in respect thereto, which are owned or leased by Tenant or any of Tenant's subtenants, successors or assignees. Additionally, Tenant shall pay any transfer or conveyance tax arising out of this Ground Lease. Tenant shall not be responsible for the payment of any income or similar tax due and payable on Owner's receipt of the rental payments under this Ground Lease or any other Taxes or Assessments except as expressly provided in this Section 21.1. Commencing on the Effective Date, Tenant shall pay Taxes and Assessments as they become due and payable and, upon request, shall provide Owner with appropriate evidence of their payment.

21.2 Proration at Commencement and Expiration of Term. Taxes and Assessments shall be prorated between Owner and Tenant for the year in which the Effective Date occurs and for the year in which the Term expires as of the date of expiration of the Term, except as hereafter provided. Proration of Taxes and Assessments shall be paid and appropriate adjustment and payment shall be made on the basis of actual Taxes and Assessments. Tenant's pro rata share of Taxes and Assessments for the years in which the Effective Date occurs and in which the Term expires shall be paid and appropriate adjustment and payment shall be made between the Parties, at the time the actual Taxes and Assessments are known, as may be necessary to accomplish proration, as herein provided.

21.3 Tenant's Right to Contest Taxes. Without limiting the right of Owner to contest any Taxes and Assessments levied against the Site, Tenant shall have the right to contest any Taxes or Assessments payable by Tenant, provided, Tenant shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment. Tenant shall have the right, at its sole expense, to institute and prosecute, in Owner's name, any suit or action to contest any tax or assessment payable by Tenant or to recover the amount of any such tax or assessment but, in such event, Tenant hereby covenants and agrees to indemnify and save Owner harmless from any and all reasonable and documented costs and expenses, including attorneys' fees, in connection with any such suit or action. Any funds recovered by Tenant as a result of any such suit or action shall belong to Tenant except to the extent any such recovery relates to a period of time that is not part of the Term. Any part of such recovery relating to a period not part of the Term shall be paid to Owner.

22. Assignment by Tenant. Tenant may not assign, sublease, mortgage, pledge, or transfer its interest in the Site or this Ground Lease without the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the immediately preceding sentence, Tenant may, without the consent of Owner, assign, pledge, sublease, or otherwise transfer in whole or in part, its rights and obligations under this Ground Lease, with respect to the entire Site or a portion of the Site, to (a) any entity that is controlled by, or under common control with, Tenant or to any partner or joint venture of Tenant's; (b) any entity resulting from the merger or consolidation of Tenant; (c) any Person or entity which acquires all of the assets of Tenant as a going concern of the business that is being conducted on the Site; (d) a Financing Party; or (e) an unrelated third party on the condition that managerial and operational control over the Facility remains with Tenant or its Affiliate following any such assignment or subletting. All such assignments, other than to a Financing Party, shall be subject to said transferee assuming all of the obligations of Tenant under the Ground Lease with respect to the portion of the Site assigned. Upon the assignee's assumption of all of the obligations of Tenant under the Ground Lease with respect to the portion of the Site assigned, Tenant shall be discharged from further liability under the Lease for the responsibilities assumed by the assignee. Tenant shall provide Owner with written notice within 10 days of any such assignment or transfer. In the event of a partial assignment as to a portion of the Site, the obligations of the assignee for Basic Rent under Section 4.1 shall be prorated based upon the acreage of the portion of the Site assigned, and the obligations of assignee for Megawatt Capacity Fee under Section 4.5 and Financial Close Milestone Payment under Section 4.6 shall be prorated based upon the megawatt capacity (under the applicable PPA) of the portion of the Site assigned.

23. Miscellaneous.

23.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given or made 3 days after being deposited in the United States mail, certified or registered with appropriate postage prepaid or, if delivered by hand (including messenger or overnight delivery service) or by telex, telecopy or other wire transmission service, when received, addressed as follows:

(a) if to Tenant, addressed to:

BrightSource Energy, Inc.  
1999 Harrison Street, Suite 2150  
Oakland, California 94612  
Attention: Mark Zahn  
Phone: (510) 250-8152  
Fax: (510) 550-8165

With a copy (which shall not constitute notice) to:

BrightSource Energy, Inc.  
1999 Harrison Street, Suite 2150  
Oakland, California 94612  
Attention: General Counsel  
Phone: (510) 550-8154  
Fax: (510) 550-8165

and

Plageman, Lund & Cannon, LLP  
155 Grand Ave., Suite 950  
Oakland, California 94612  
Attention: Dana W. Fox, Esq.  
Phone: (510) 899-6100  
Fax: (510) 899-6101

(b) if to Owner, addressed to:

Metropolitan Water District of Southern California  
700 North Alameda Street  
Los Angeles, CA 90012  
Attention: Real Property Development and Management Group  
Ralph T. Hicks, Manager  
Phone: (213) 217-6183  
Fax: (213) 576-5171

With a copy (which shall not constitute notice) to:

Metropolitan Water District of Southern California  
700 North Alameda Street  
Los Angeles, CA 90012  
Attention: Office of the General Counsel – John Clairday  
Phone: (213) 217-6314  
Fax: (213) 217-6890

or to such other address as either Party shall from time to time designate in writing to the other Party.

23.2 Counterparts; Signatures. This Ground Lease may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The Parties hereby acknowledge and agree that they (a) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (b) are aware that the other Party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Ground Lease based on the foregoing forms of signature.

23.3 Amendments. Neither this Ground Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

23.4 Headings, etc. The headings of the various Sections of this Ground Lease are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

23.5 Successors and Assigns. The terms of this Ground Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

23.6 Confidentiality. Owner shall, on or before the Effective Date, have entered into a non-disclosure agreement with Tenant, the form of which is attached as Exhibit D.

23.7 Attorneys' Fees. If either Party commences an action or proceeding against the other Party arising out of or in connection with this Ground Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other Party or any or all of its property or assets, the prevailing Party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful Party reasonable attorneys' fees, court costs, expenses and other costs of investigation and preparation. If such prevailing Party recovers a judgment in any such action, proceeding, or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

23.8 Interpretation. The Parties acknowledge that this Ground Lease, as executed, is the product of negotiations between Owner and Tenant and that it shall be construed fairly, in accordance with its terms, and shall not be construed for or against either Party. No inferences as to the intention of the Parties shall arise from the deletion of any language or provisions of this Ground Lease.

23.9 Memorandum of Lease. Concurrently with the execution of this Ground Lease, Owner and Tenant shall execute, acknowledge before a notary public, in recordable form, and deliver a short form memorandum of lease in the form of Exhibit C, attached hereto and incorporated herein, which shall be recorded by Tenant in the Official Records.

23.10 Severability. If any term or provision of this Ground Lease is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ground Lease shall not be affected thereby, and each remaining term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

23.11 Time is of the Essence. Time is of the essence of this Ground Lease and each and every provision of this Ground Lease.

23.12 Consent and Approvals. Any consent or approval that a Party is obligated to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific provision to the contrary contained in this Ground Lease.

23.13 Entire Agreement. This Ground Lease, including any exhibits and attachments hereto, constitutes the entire agreement between Owner and Tenant relative to the matters and transactions contemplated herein. Owner and Tenant agree hereby that all prior or contemporaneous oral or written agreements, or letters of intent, between and among themselves or their agents including any leasing agents and representative, relative to such matters and transactions are merged in or revoked by this Ground Lease.

23.14 Broker's Commission. Tenant represents and warrants that it has not dealt with any broker or agent in connection with this Ground Lease and Tenant agrees to indemnify and save Owner harmless from any claims made by any brokers or agents claiming to have dealt with Tenant. Owner represents and warrants that it has not dealt with any brokers or agents in connection with this Ground Lease, and Owner agrees to indemnify and save Tenant harmless from any claims made by any brokers or agents claiming to have dealt with Owner. The terms and provisions of this Section 23.14 shall survive the termination or earlier expiration of this Ground Lease.

23.15 Estoppel Certificate. Each Party agrees to deliver to the other Party, within 30 days after receipt of written request therefore, a statement addressed to the other Party, any such proposed mortgagee or purchaser, in a form reasonably requested by such Party, certifying that this Ground Lease is unmodified and in full force and effect (if such is the case), certifying the commencement and termination dates of the Term of this Ground Lease, certifying that there has been no assignment or sublease (by Tenant) of this Ground Lease and that there are no defenses or offsets hereto (or stating those claimed by such Party), and containing such other information as reasonably may be requested by the Party to whom such certificate is addressed. In the event that a Party fails to deliver such statement to the other Party within the 30 day period above provided, it shall be deemed that this Ground Lease is in full force and effect and that the other Party has no defenses or offsets against the requesting Party, and that the other information contained in the requested statement is correct.

23.16 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS THAT THEY MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS GROUND

LEASE OR ANY TRANSACTIONS CONTEMPLATED HEREBY OR RELATED HERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL CAUSES OF ACTION, DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS, WHETHER IN CONTRACT, TORT OR OTHERWISE, IN ANY SUCH ACTION OR PROCEEDING. THE PARTIES UNDERSTAND THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND THE PARTIES BELIEVE THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

#### 24. Owner Option to Purchase Facility

24.1 Owner Option. Tenant has entered into, or will enter into, one or more PPAs (as defined in Section 1.20) covering the power generation from all or certain portions of the Site. When a PPA expires, Tenant (or its permitted assignee pursuant to Section 22) may elect to market for sale the portion of the Facility covered by such expiring PPA and related rights as further defined below (the “***Marketed Facilities***”). In the event Tenant or its assignee does so, Owner shall have the Option to purchase the Marketed Facilities at Fair Market Value (as defined below), in accordance with the terms and conditions of this Section 24 (“***Owner Option***”). The Marketed Facilities include taking assignment of the Tenant’s or assignee’s applicable proportional interest in any Shared Facilities Agreement (as defined in Section 1.25), and Tenant’s or assignee’s applicable proportional interest in any previous assignment covering common areas within the Site upon which Shared Facilities are located. If Tenant enters into more than one PPA covering portions of the Site, the Owner Option shall apply separately to each expiring PPA and the Marketed Facilities associated therewith.

24.2 Notice of Sale; Notice of Exercise. At any time during the two (2) month period commencing on the date that is sixteen (16) months prior to the expiration of a PPA, Tenant shall give notice to Owner whether it intends to market the portion of the Facility covered by such expiring PPA for sale and confirm whether or not it is in receipt of a current offer to purchase the Facility (“***Notice of Sale***”). Owner may exercise the Owner Option by delivering a written notice to Tenant stating Owner’s intent to exercise the Owner Option (“***Notice of Exercise of Owner Option***”) at any time after delivery by Tenant of a Notice of Sale but at least twelve (12) months before the expiration of the applicable PPA. If the Notice of Exercise of Owner Option is timely delivered, Owner and Tenant shall cooperate to establish the Fair Market Value by no later than nine (9) months before the expiration of the PPA, either by negotiation or by appraisal as provided in Section 24.4. If no Notice of Exercise of Owner Option is delivered to Tenant by the date which is twelve (12) months before the expiration of the applicable PPA, then the Owner Option shall expire with respect to that PPA only, and Owner shall have no right to purchase the Marketed Facilities associated with that PPA.

24.3 Fair Market Value. As used in this Section 24, “***Fair Market Value***” means the fair market value price for a purchase and sale of the Marketed Facilities, as of the expiration date of the applicable PPA, based upon what a willing buyer would pay and a willing seller would accept in an arm’s length transaction, assuming the buyer would be able to continue to operate the applicable portion of the Facility covered by the expiring PPA and any associated

Shared Facilities. Fair Market Value shall be calculated by assuming the buyer will take assignment of all of Tenant's or assignee's rights and obligations under (i) this Ground Lease with respect to the Marketed Facilities; (ii) any previous assignment covering common areas within the Site upon which Shared Facilities are located; and (iii) any applicable Shared Facilities Agreement, in each case for the remainder of the terms of such agreements following expiration of the applicable PPA.

24.4 Appraisal. If the Parties, through negotiation, have not agreed upon the Fair Market Value by the date which is nine (9) months before expiration of the PPA, then the Fair Market Value shall be established by appraisal as provided in this section. The Parties shall cooperate to select an independent, neutral, mutually acceptable appraiser, with appropriate qualifications and experience in the appraisal of power generation facilities comparable to the Facility and the Shared Facilities. If the Parties cannot agree upon the appointment of an appraiser, either Party may petition the Superior Court of the County of Los Angeles to appoint the appraiser. The appraiser shall be instructed to determine the Fair Market Value in accordance with Section 24.3 and to notify the Parties of same no later than seven (7) months prior to expiration of the PPA.

24.5 Owner Right to Cancel Exercise. At any time until the date which is six (6) months before expiration of the applicable PPA, Owner shall have the right in its sole discretion to cancel its Notice of Exercise of Owner Option by delivering to Tenant a written notice of cancellation. If the Owner cancels its Notice of Exercise of Owner Option within such time, then the Owner Option shall expire and Owner shall have no further right or obligation to purchase the Marketed Facilities with respect to such PPA.

24.6 Confirmation of Owner Exercise. No later than the date which is six (6) months before expiration of the applicable PPA, if Owner desires to continue with the exercise of the Owner Option, Owner shall deliver to Tenant a "Confirmation Notice" indicating that Owner's Board of Directors have approved and appropriated funds necessary to purchase the Marketed Facilities in accordance with the Owner Option. If Owner fails to deliver a Confirmation Notice to Tenant by the date which is six (6) months before expiration of the applicable PPA, then the Notice of Exercise of Owner Option shall automatically be deemed cancelled, the Owner Option shall expire, and Owner shall have no further right or obligation to purchase the Marketed Facilities with respect to such PPA.

24.7 Closing. If the Owner Option has been exercised and not cancelled, as provided herein, then Owner and Tenant shall cooperate during the final six (6) months of the term of the PPA to allow a closing of the sale of the Marketed Facilities to occur concurrently with the expiration of the PPA (the "Closing"). Owner and Tenant shall cooperate to execute such further commercially reasonable documentation as may be needed to complete the sale of the Marketed Facilities in accordance with this Section.

24.8 Termination of Ground Lease at Closing. If a single expiring PPA covers the entire Site, and the Owner Option has been exercised as to the entire Site and not cancelled, as provided herein, then this Ground Lease shall terminate effective upon the date the Closing occurs. In the event this Ground Lease is terminated pursuant to this Section 24.8, Tenant shall

be relieved from, and Owner shall assume, all obligations of Tenant to decommission, dismantle and remove the Facility as provided in Section 6.

24.9 Amendment of Ground Lease at Closing. If an expiring PPA covers only a portion of the Site, and the Owner Option has been exercised as to such portion of the Site and not cancelled, as provided herein, then a merger could occur to the extent Owner becomes both landlord and tenant with respect to such portion of the Site. Therefore, this Ground Lease shall be amended at the Closing to exclude such portions of the Site from the premises under this Ground Lease, to the extent needed to avoid a merger at the Closing. The Basic Rent under Section 4.1 shall be reduced by the amounts allocable on an acreage basis to the portion of the Site removed. The Megawatt Capacity Fee under Section 4.5 and Financial Close Milestone Payment under Section 4.6 shall be reduced by the amounts allocable on a megawatt capacity basis (under the applicable PPA) to the portion of the Site removed. In such event, Tenant shall be relieved from, and Owner shall assume, all obligations of Tenant to decommission, dismantle and remove those portions of the Facility located upon the excluded portion of the Site, as provided in Section 6.

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

**OWNER:**

**TENANT:**

METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

BRIGHTSOURCE ENERGY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Ralph T. Hicks, Manager  
Real Property Development and  
Management Group

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

EXHIBIT A

**Parcel Acreage**

<b>Parcel Number</b>	<b>Approximate Acreage</b>
--------------------------	--------------------------------

---

Exhibit A

EXHIBIT B

**Legal Description of Site**

**Parcel  
Number**

**Legal Description**

Real property in Riverside County, California, described  
as follows:

Exhibit B

EXHIBIT C

Form of Memorandum of Ground Lease Agreement

<b>WHEN RECORDED RETURN TO:</b>  _____  _____  _____  Attn: _____
---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF GROUND LEASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 2010, is by and between \_\_\_\_\_ (the "Owner") and BRIGHTSOURCE ENERGY, INC., a Delaware corporation ("Tenant"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Ground Lease (defined below).

WITNESSETH:

For value received, Owner and Tenant do hereby agree as follows:

1. **Leased Premises and Date of Ground Lease.** Owner hereby leases to Tenant, and Tenant hereby leases from Owner, for the Term (as hereinafter defined), certain real property and other property which is described on the attached Exhibit A (the "Site") pursuant to the terms of a Ground Lease between Owner and Tenant dated as of \_\_\_\_\_, 2010 (as may be amended, modified, extended, supplemented, restated or replaced from time to time, the "Ground Lease").

2. **Term.** The term of the Ground Lease for the Site ("Term") commences on \_\_\_\_\_ and ends 40 years thereafter, unless the Term is earlier terminated in accordance with the provisions of the Ground Lease.

3. **Effect of Memorandum.** The purpose of this instrument is to give notice of the Ground Lease and its respective terms, covenants and conditions to the same extent as if the Ground Lease was fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Ground Lease and the parties agree that this Memorandum is

not intended nor shall it be used to interpret the Ground Lease and in the event of any conflict between the Ground Lease and this Memorandum, the Ground Lease shall control.

IN WITNESS WHEREOF, the Parties hereto have duly executed this instrument as of the day and year first written.

**OWNER:**

METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By: \_\_\_\_\_  
Ralph T. Hicks, Manager  
Real Property Development and  
Management Group

**GRANTEE:**

BRIGHTSOURCE ENERGY, INC.,  
a Delaware corporation

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

**[Add appropriate local notary acknowledgements]**

EXHIBIT A TO MEMORANDUM OF GROUND LEASE

**Site Description**

See attached.

EXHIBIT D

**Form of Non-Disclosure Agreement**

To include language acknowledging that Owner is a public agency subject to the provisions of the Public Records act and to expressly provide that the monetary terms of the Ground Lease are a matter of public record.

See attached

Exhibit D

EXHIBIT E

**Tenant Certificate of Insurance**

See attached

Exhibit E

**Exhibit D**

**ACORD Insurance Form**

See Attached

**EXHIBIT E**

**Metropolitan Disclosure Statement**

See attached

## EXHIBIT F

### NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is entered into this th day of November, 2010, by and between BrightSource Energy, Inc. ("BrightSource"), a Delaware corporation of 1999 Harrison Street, Suite 2150, Oakland, CA 94612 and The Metropolitan Water District of Southern California, a public agency ("Recipient").

**WHEREAS**, BrightSource has and/or will provide Confidential Information (as defined below) to Recipient in connection with business, technical and financial discussions regarding a potential transaction between the parties (the "Purpose").

**NOW, THEREFORE**, the parties agree as follows:

1. Confidential Information. "Confidential Information" as used in this Agreement shall mean all business, technical and financial information disclosed to Recipient by BrightSource or its subsidiary BrightSource Industries (Israel) Ltd. or by any other BrightSource subsidiaries or affiliates, including without limitation information relating to products, services, systems, patents, patent applications, software, designs, prototypes, models, drawings, methods, processes, specifications, user interfaces, data, algorithms, plans, analysis, marketing, distribution, sales, costs, pricing, customers, suppliers, investors, finances, business opportunities, personnel, research and development, know-how, and any other information of a confidential or proprietary nature that derives actual or potential economic value from not being generally known to the public, to competitors or to other persons who may obtain economic value from its disclosure or use, whether such information is in written, electronic or oral form and whether or not it is stamped or otherwise marked as confidential. Confidential Information does not include information which (i) is or becomes part of the public domain other than as a result of disclosure by Recipient (ii) becomes available to Recipient on a non-confidential basis from a source other than BrightSource, provided that such source is not bound with respect to that information by a confidentiality agreement with BrightSource or is otherwise prohibited from transmitting that information by a contractual, legal or other obligation, or (iii) can be proven by Recipient to have been in Recipient's possession prior to disclosure by BrightSource. However, notwithstanding these exceptions, any combination of features disclosed to Recipient shall not fall within the foregoing exceptions merely because individual features are separately in the public domain or in its possession, unless the combination itself is in the public domain or otherwise legitimately in its possession from sources other than BrightSource.

2. No Disclosure or Use of Confidential Information. Recipient will not disclose Confidential Information except to its employees and consultants who have a need to know and are bound by written confidentiality provisions providing protection no less strict than the protection provided under the terms of this Agreement. In no event will Recipient disclose Confidential Information, or allow Confidential Information to be disclosed, to any third party, or use Confidential Information other than for the Purpose, except with BrightSource's prior written consent.

3. Ownership of Confidential Information. All Confidential Information shall be and remain the exclusive property of BrightSource. No right, license or warranty, express or implied, is granted to Recipient with respect to any Confidential Information.

4. Compelled Disclosure. In the event that Recipient is required by deposition, interrogatory, request for records or documents pursuant to the California Public Records Act, subpoena, civil investigative demand or similar judicial or administrative process to disclose any Confidential Information, Recipient shall promptly notify BrightSource, allowing BrightSource to oppose such process, and Recipient shall cooperate to the extent allowed by law in such opposition.

5. Non-Solicitation. Recipient will not, for a period of one year from the date of this Agreement, directly or indirectly employ or solicit for employment, any person who was employed or retained by BrightSource or its subsidiaries and affiliates, and with whom Recipient had contact in the course of discussions in connection with the Purpose.

6. Term: The obligations regarding confidentiality, non-use and non-disclosure set forth herein shall survive for a period of five (5) years from the date of this Agreement.

7. Return of Confidential Information. Immediately upon the request of BrightSource, Recipient agrees to (a) return to BrightSource or destroy all Confidential Information, including all copies of thereof; and (b) cause any

memorandum, summary, report, document or other derivative created by it that contains or is based on Confidential Information, to be destroyed.

8. Relationship of Parties. Nothing in this Agreement obligates BrightSource to disclose any information to Recipient or creates an agency or partnership relationship between BrightSource and Recipient, or obligates either party to negotiate or enter into any transaction.

9. Severability. In the event that any one of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

10. Waiver. Failure or omission by BrightSource at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair that provision in any way or the rights of BrightSource to avail itself of remedies it may have in respect to any breach of that provision. Any waiver or consent given by BrightSource must be in writing but shall be effective only as to that instance and will not be construed as a bar to or waiver of any right on any other occasion.

11. Assignment. Recipient may not assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of BrightSource. Any assignment without such consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of BrightSource without restriction.

12. Injunctive Relief. Recipient agrees that should it breach or threaten to breach any provision of this Agreement, BrightSource will suffer irreparable damages and its remedy at law will be inadequate. Therefore, if Recipient threatens or actually breaches this Agreement, BrightSource shall be entitled, in addition to all other remedies available to it at law or in equity, to the following: (a) equitable relief, including specific performance and injunctive relief to enforce any provision hereof and to restrain Recipient from using or disclosing, in whole or in part, directly or indirectly, any Confidential Information, without having to prove that actual damages or monetary damages would not be an adequate remedy, and without having to post a bond; and (b) recovery for damages, losses, and expenses of any nature (including, but not limited to, attorneys' fees and other litigation expenses) arising out of, resulting from, or otherwise relating to such breach or threatened breach.

13. Entire Agreement; Amendments. This Agreement contains the entire agreement of the parties and supersedes any and all prior or contemporaneous agreements, written or oral, relating to the subject matter hereof. This Agreement may not be amended unless agreed to in writing by both parties.

14. Attorneys' Fees. The prevailing party in any lawsuit or other proceeding regarding this Agreement shall be entitled, in addition to other costs and damages, to reasonable attorneys' fees and litigation expenses.

15. Governing Law; Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of laws provisions. Recipient hereby expressly submits and consents to the jurisdiction of the federal and state courts located in San Francisco County, California.

16. Notices. Any notice to be given under this Agreement will be deemed sufficiently served when reduced to writing and delivered in person, by facsimile transmission, by overnight (next day) delivery, or upon receipt, if deposited in United States mail, addressed to the respective addresses of the parties as indicated above.

17. Counterparts. This Agreement can be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**BrightSource Energy, Inc.:**

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

**Metropolitan Water District  
of Southern California:**

By: \_\_\_\_\_  
Name: Ralph T. Hicks, Manager  
Title: Real Property Development  
and Management

**EXHIBIT G**

**FORM OF MEMORANDUM OF AGREEMENT**

Recording requested by  
And when recorded mail to:

BrightSource Energy, Inc.  
1999 Harrison Street, Suite 2150  
Oakland, California 94612  
Attention: Mark Zahn

SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE

**MEMORANDUM OF OPTION TO LEASE AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 2010, by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a California public agency ("Metropolitan"), and BRIGHTSOURCE ENERGY, INC., a Delaware corporation ("BrightSource").

Metropolitan and BrightSource have entered into an unrecorded Agreement for Environmental Review and Option to Lease dated as of \_\_\_\_\_, 2010 ("Agreement"), whereby Metropolitan and BrightSource have agreed to undertake an investigation and environmental review of a solar thermal generation facility to be located, pursuant to a lease between the parties, on that certain real property described on Exhibit A and shown on Exhibit B, attached hereto, consisting of the approximate acreage listed on Exhibit A attached hereto and made a part hereof, all located in Riverside County, California ("Property"), upon and subject to the terms and conditions set forth therein. The Option is subject to Metropolitan's compliance with the California Environmental Quality Act and must be exercised, if at all, within three years and seven months following \_\_\_\_\_, 2010 (the "Effective Date"), unless further extended pursuant to the Agreement.

The purpose of this Memorandum of Agreement is to give notice of the existence of the Agreement, which itself constitutes the agreement of the parties. This Memorandum may be executed in counterparts.

***[SIGNATURE PAGE FOLLOWS]***

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

BRIGHTSOURCE ENERGY, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Ralph T. Hicks  
Manager, Real Property Development  
and Management Group

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Clairday  
Sr. Deputy General Counsel

[Attach appropriate notaries]