

RESOLUTION NO. *SD16-012*  
OF THE BOARD OF DIRECTORS OF  
NEVADA COUNTY SANITATION DISTRICT NO. 1

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EASEMENT AND SUBLEASE WITH RESPECT TO THE FINANCING OF CERTAIN SOLAR POWER GENERATING EQUIPMENT AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF SUCH FINANCING**

WHEREAS, Nevada County Sanitation District No. 1 (the “*Sanitation District*”) owns and operates certain facilities and property for the collection, treatment and disposal of wastewater at its Lake of the Pines Treatment Plant (the “*Treatment Plant*”); and

WHEREAS, the Sanitation District wishes to have installed at the Treatment Plant a solar system and photovoltaic power generating system and related improvements (collectively, the “*Treatment Plant Solar Equipment*”) in order to reduce the energy charges associated with the operation of the Treatment Plant; and

WHEREAS, the County of Nevada wishes to install solar systems and photovoltaic power generating systems and related improvements at certain of its public buildings and other facilities (collectively, together with the Treatment Plant Solar Equipment, the “*NCREBs Solar Equipment*”) and, in connection with the financing thereof, has applied for and received from the Internal Revenue Service a New Clean Renewable Energy Bond volume cap; and

WHEREAS, the County proposes to finance the NCREBs Solar Equipment through a lease-leaseback arrangement with the County and the Nevada County Finance Authority (the “*Authority*”); and

WHEREAS, including the financing of the Treatment Plant Solar Equipment in the County’s financing of the remainder of the NCREBs Solar Equipment will reduce the financing costs that will be incurred by the Sanitation District; and

WHEREAS, in order to include the financing of the Treatment Plant Solar Equipment in the County’s financing of the remainder of the NCREBs Solar Equipment it is necessary and appropriate for the Sanitation District to grant to the County an easement over the Treatment Plant site pursuant to which the County will have the right to install the Treatment Plant Solar Equipment for the benefit of the Sanitation District (the “*Easement*”) and for the Sanitation District to enter into an Equipment Sublease/Purchase Agreement pursuant to which the County will agree to install the Treatment Plant Solar Equipment and, having agreed to lease it back from the Authority, sublease it to the Sanitation District (the “*Sublease Agreement*”); and

WHEREAS, there have been presented to this Board of Directors forms of the Easement and the Sublease Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Nevada County Sanitation District No. 1 as follows:

1. Defined Terms. Capitalized terms that are used, but not otherwise defined, in the remainder of this Resolution shall have the respective meanings ascribed to them in the recitals of this Resolution.
2. Appointment of Authorized District Representatives. The Chairman of this Board of Directors, any other member of this Board of Directors, the District Administrator of the Sanitation District and any designee of any of the foregoing (each individually, an “*Authorized District Representative*,” and collectively the “*Authorized District Representatives*”) are each hereby designated to act as authorized representatives of the Sanitation District for purposes of each of the documents approved by this Resolution.

3. Approval and Authorization of Financing Agreements. The form, terms and provisions of the Easement and Sublease Agreement are hereby approved in substantially the forms presented at this meeting; and each of the Authorized District Representatives, acting alone, is hereby authorized and directed to accept, execute and deliver said documents to the County (together with all exhibits and schedules to each of them) for and on behalf of the District with such insertions, omissions and changes as shall be approved by such Authorized District Representative, the execution and delivery of such document being conclusive evidence of such approval.
4. Other Actions Authorized. The officers and employees of the District shall take all action necessary or reasonably required by the County to carry out, give effect to and consummate the transactions contemplated hereby and by the Easement and Sublease Agreement thereby and to take all action necessary in conformity therewith, including, without limitation, the recordation of thereof and the execution and delivery of any closing and other documents required to be delivered in connection with either of the Easement or the Sublease Agreement.
5. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.
6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

PASSED AND ADOPTED at a special meeting of the Board of Directors of the Nevada County Sanitation District No. 1, held on the 16th day of August, 2016, by the following vote:

Ayes: Directors Nathan H. Beason, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Directors

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




\_\_\_\_\_  
Dan Miller, Chair

8/16/2016 cc: CEO\*  
AC\*(hold)

3/10/2017 cc: CEO\*  
AC\*(release)

**RECORDING REQUESTED BY:**  
County of Nevada

Nevada County Recorder  
Gregory J. Diaz  
Document#: 20160019565  
Tuesday August 30 2016, at 02:04:31 PM

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NF

**AND WHEN RECORDED MAIL TO:**  
Stradling Yocca Carlson & Rauth  
44 Montgomery Street, Suite 4200  
San Francisco, California 94104  
Attn: Kerrigan Bennet, Esq.

Paid: CP  
First American Title Co

[Space above for Recorder's use.]

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11921 OF THE CALIFORNIA REVENUE AND TAXATION CODE, AND THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE BECAUSE THE LESSOR IS A GOVERNMENTAL AGENCY. LEASE TERM LESS THAN 35 YEARS.

THE LESSOR AND THE LESSEE ARE GOVERNMENTAL AGENCIES.

**EQUIPMENT SUBLEASE/PURCHASE AGREEMENT**

Dated as of August 1, 2016

between

**COUNTY OF NEVADA, CALIFORNIA,**  
*as sublessor,*

and

**NEVADA COUNTY SANITATION DISTRICT NO. 1,**  
*as sublessee*

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## EQUIPMENT SUBLEASE/PURCHASE AGREEMENT

This EQUIPMENT SUBLEASE/PURCHASE AGREEMENT (this "*Agreement*"), dated as of August 1, 2016, between the COUNTY OF NEVADA, a county and political subdivision of the State of California (the "*County*"), as sublessor and NEVADA COUNTY SANITATION DISTRICT NO. 1, a political subdivision of the State of California (the "*Sanitation District*"), as sublessee,

### WITNESSETH:

WHEREAS, all capitalized terms used, but not defined, in these Recitals shall have the respective meanings set forth in Section 1.1 hereof; and

WHEREAS, the Sanitation District owns and operates certain property and facilities for the collection, treatment and disposal of wastewater at its Lake of the Pines Treatment Plant; and

WHEREAS, the Sanitation District wishes to have installed at the Treatment Plant a photovoltaic power generating system and related improvements (collectively, the "Treatment Plant Solar Equipment") in order to reduce the energy charges associated with the operation of the Treatment Plant; and

WHEREAS, the County wishes to install photovoltaic power generating systems and related improvements on certain of its public properties (collectively, together with the Treatment Plant Solar Equipment, the "NCREBs Solar Equipment") and, in connection with the financing thereof, has applied for and received from the Internal Revenue Service a New Clean Renewable Energy Bond volume cap; and

WHEREAS, the County proposes to finance and install the Treatment Plant Solar Equipment through a lease-leaseback arrangement with the Nevada County Finance Authority pursuant to which it is expected that the County, in consideration of a payment from the Authority, will cause the installation of the NCREBs Solar Equipment and, upon the completion of such installation, lease the NCREBs Solar Equipment to the Authority pursuant to a Site, Facility and Equipment Lease and lease it back from the Authority pursuant to an NCREBs Equipment Lease; and

WHEREAS, including the financing of the Treatment Plant Solar Equipment in the County's financing of the remainder of the NCREBs Solar Equipment will reduce the financing costs that will be incurred by the Sanitation District and thereby benefit its rate payers; and

WHEREAS, in order to include the financing of the Treatment Plant Solar Equipment in the County's financing of the other NCREBs Solar Equipment, (1) the Sanitation District has granted to the County an easement over the Treatment Plant site pursuant to which the County has the right to install the Treatment Plant Solar Equipment for the benefit of the Sanitation District and (2) the parties are entering into this Sublease Agreement pursuant to which the County will install the Treatment Plant Solar Equipment and, having agreed to lease it back from the Authority, will sublease it to the Sanitation District;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants herein contained, the County and the Sanitation District formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS; RULES OF INTERPRETATION

Section 1.1 *Definitions.* All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Agreement (including the Recitals hereto).

“*Administrative and Maintenance Charge*” means the charge for administrative and maintenance services so designated in Section 4.3.

“*Agreement*” means this Equipment Sublease/Purchase Agreement, dated as of August 1, 2016, between the County (as sublessor) and the Sanitation District (as sublessee), as originally executed or as hereafter amended under any duly authorized and executed amendments hereto.

“*Assigned NCREBs Lease Rights*” shall have the meaning assigned to it in the Lease Agreement.

“*Authority*” means the Nevada County Finance Authority, a joint exercise of powers public financing entity duly organized and existing under the laws of the State of California.

“*Available Project Proceeds*” means the sum of (a) \$1,645,841, *plus* (b) investment earnings thereon as determined by the County.

“*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*County*” means the County of Nevada, California, a county and political subdivision of the State of California organized and existing under and by virtue of the laws of the State of California.

“*Default Rate*” means a rate of interest equal to the lesser of (a) the NCREBs Rate, *plus* 5% per annum or (b) the maximum rate permitted by law.

“*Delivery Costs*” means the costs incurred by the County in connection with the execution and delivery of this Agreement, the NCREBs Equipment Lease, the NCREBs Lease Assignment and the financing of the acquisition and installation of the NCREBs Solar Equipment, including the initial NCREBs Lease Assignee’s origination fee, fees and expenses of the financial advisor and the placement agent, fees and expenses of the Special Counsel, fees of the initial NCREBs Lease Assignee’s counsel, the title insurance premium and other costs related to obtaining the title insurance policy, filing and recording costs and other similar fees and costs.

“*Easement*” means the easement conveyed by the Sanitation District to the County by the Grant of Solar Facilities Easement executed by the Sanitation District on or about August 31, 2016.

“*Easement Area*” shall have the meaning ascribed to it in the Grant of Solar Facilities Easement executed by the Sanitation District on or about August 31, 2016.

*“Event of Default”* means any of the events of default as defined in Section 8.1

*“Excess Proceeds”* means the sum of (1) the remainder, if any, of “Available Project Proceeds” minus the aggregate amount of the actual “Treatment Plant Solar Equipment Costs” plus (2) the Sanitation District’s Share of the remainder, if any, of the amount deposited into the NCREBs Delivery Costs Subaccount of the Escrow Account pursuant to Section 3.1(a) of the Lease Agreement minus the aggregate amount of the actual “Delivery Costs”.

*“Extended Sublease Term”* means a period (and any successive period) during which the original Sublease Term is extended pursuant to Section 4.2 or 6.5 and is equal in duration to any period during which the Sanitation District does not pay Sublease Payments (in whole or in part) when scheduled as a result of the occurrence of an event that results in abatement of the Sanitation District’s obligation to make Sublease Payments in accordance to Section 6.2 or 6.3.

*“Fiscal Year”* means each twelve-month period during the Sublease Term commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the County as its fiscal year period.

*“Funding Date”* has the meaning ascribed thereto in the Lease Agreement.

*“Gross Revenues”* means all gross charges received for, and all other gross income and receipts derived by the Sanitation District from, the ownership and operation of the Wastewater System or otherwise arising from Zone 2, including but not limited to investment earnings thereon; but excluding (a) the proceeds of any ad valorem property taxes levied in Zone 2 for purpose of paying general obligation bonds of the Sanitation District relating to the Wastewater System, and (b) the proceeds of any special assessments or special taxes levied upon real property within Zone 2 for the purpose of paying special assessment bonds or special tax obligations of the Sanitation District relating to the Wastewater System.

*“Lease Agreement”* means the Lease Agreement, dated as of August 1, 2016, by and between the Authority and the County.

*“Lien”* means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction).

*“Material Adverse Change”* means any change in the Sanitation District’s creditworthiness that could have a material adverse effect on (a) the financial condition or operations of the Sanitation District, or (b) the Sanitation District’s ability to perform its obligations under this Agreement.

*“NCREBs Equipment Lease”* has the meaning ascribed to it in the Lease Agreement.

*“NCREBs Lease Assignee”* has the meaning ascribed to it in the Lease Agreement.

*“NCREBs Lease Assignment”* has the meaning ascribed to it in the Lease Agreement.

*“NCREBs Lease Payments”* has the meaning ascribed to it in the Lease Agreement.



“*NCREBs Rate*” has the meaning ascribed to it in the Lease Agreement.

“*NCREBs Solar Equipment*” has the meaning ascribed to it in the Lease Agreement.

“*Net Proceeds*” means any eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers) or any insurance award paid with respect to the Treatment Plant Solar Equipment to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Net Revenues*” means, for any period, an amount equal to all of the Gross Revenues received during such period minus (a) the amount required to pay all Operation and Maintenance Costs becoming payable during such period (b) amounts becoming payable by the Sanitation District during such period pursuant to the provisions of the Prior Sanitation District Financing Documents and (c) amounts becoming payable Sanitation District during such period pursuant to the provisions of any other obligation issued or incurred by the Sanitation District to which the County agrees in writing to subordinate its right to receive Sublease Payments hereunder.

“*Operation and Maintenance Costs*” means the reasonable and necessary costs and expenses paid by the Sanitation District for maintaining and operating the Wastewater System, including but not limited to (a) the reasonable expenses of management and repair and other costs and expense necessary to maintain and preserve the Wastewater System in good repair and working order, and (b) the reasonable administrative costs of the Sanitation District attributable to the operation and maintenance of the Wastewater System; but in all cases excluding (i) interest expense relating to obligations of the Sanitation District with respect to Wastewater System, (ii) depreciation, replacement and obsolescence charges or reserves therefor, and (iii) amortization of intangibles or other bookkeeping entries of a similar nature.

“*Permitted Encumbrances*” means as of any time, with respect to the real estate in, on or to which any Treatment Plant Solar Equipment is acquired and installed: (a) the fee interest of the Sanitation District and the Easement; (b) Liens for general ad valorem taxes and assessments, if any, not then delinquent or which the County may permit to remain unpaid under Article V of this Agreement; (c) the NCREBs Equipment Lease and the NCREBs Lease Assignment; (d) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (e) any easements, rights of way, mineral rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the Sanitation District certifies in writing will not impair the use of such real estate for its intended purposes, interfere with the Sanitation District’s or the County’s beneficial use and enjoyment of the Treatment Plant Solar Equipment, result in any abatement of the Sublease Payments hereunder or NCREBs Lease Payments under the NCREBs Equipment Lease or adversely affect the rights and interests of the County or the NCREBs Lease Assignee hereunder or under the NCREBs Equipment Lease or under the Site Lease or the Easement; and (f) any other Lien, security interest, mortgage, deed of trust, pledge, hypothecation, assignment or other security or preferential arrangement of any kind or nature whatsoever of which the prior written consent of the NCREBs Lease Assignee has been obtained.

“*Person*” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental Sanitation District or any other entity of whatever nature.

“*Prior Sanitation District Financing Documents*” means (a) the Loan Agreement (Lake of the Pines Project Financing), dated as of August 1, 2006, by and between LaSalle Bank National Association and the Sanitation District, as heretofore or hereafter amended and supplemented, and (b) the Agreement designated as Agreement Number 06-807-550-0 by and between the State Water Resources Control Board and the Sanitation District, as heretofore or hereafter amended and supplemented.

“*Qualified New Clean Renewable Energy Project*” has the meaning ascribed to it in the Lease Agreement.

“*Rental Period*” means for each Sublease Payment Date, the semi-annual period from the first day after the next preceding Sublease Payment Date to (and including) such succeeding Sublease Payment Date; *provided* that the first Rental Period begins on the Funding Date and ends on August 1, 2017.

“*Sanitation District*” means Nevada County Sanitation District No. 1, a political subdivision of the State of California.

“*Sanitation District’s Share*” means: (a) prior to (i) any mandatory partial prepayment of Sublease Payments from Excess Proceeds pursuant to Section 3.2 or from Net Proceeds pursuant to Section 9.2 or (ii) any mandatory partial prepayment of NCREBs Lease Payments from “Excess Proceeds” (as defined in the Lease Agreement) pursuant to Section 3.4 of the Lease Agreement or from “Net Proceeds” (as defined in the Lease Agreement) pursuant to Section 9.2 of the Lease Agreement, 15.46% of the amount in question and (b) after any mandatory partial prepayment of either Sublease Payments or NCREBs Lease Payments, the quotient (expressed as a percentage) obtained by dividing the aggregate amount of the principal components of all remaining Sublease Payments by the aggregate amount of the principal components of all remaining NCREBs Lease Payments..

“*Special Counsel*” means (a) Stradling Yocca Carlson & Rauth, a Professional Corporation, or (b) any other attorney or firm of attorneys (acceptable to the NCREBs Lease Assignee) of nationally recognized expertise with respect to legal matters relating to tax-credit obligations or obligations the interest on which is excludable from gross income of the owners thereof for federal income tax purposes.

“*Sublease Payment Commencement Date*” shall mean the Funding Date.

“*Sublease Payment Date*” means February 1 and August 1 in each year, commencing August 1, 2017, on which the Sanitation District is required to make an Sublease Payment as specified in the Sublease Payment Schedule.

“*Sublease Payment Schedule*” means the Sublease Payment Schedule attached as Exhibit A to this Agreement.

“*Sublease Payments*” means the basic rental payments payable by the Sanitation District pursuant to this Agreement on the Sublease Payment Dates in the amounts as specified in the Sublease Payment Schedule, consisting of a principal component and an interest component as provided therein.

“*Sublease Term*” means the period that begins on the Funding Date and ends on the first Business Day after the last scheduled Sublease Payment Date, subject to extension as provided in Section 4.2 and 6.5; *provided* that the Sublease Term shall, in any event, terminate no later than August 1, 2046.

“*Treatment Plant*” means the real property owned and operated by the Sanitation District at 10984 Riata Way, Auburn, California, that is generally known as the Lake of the Pines Wastewater Treatment Plant and which is more fully described in Exhibit B hereto .

“*Treatment Plant Solar Equipment*” means the equipment and other property consisting of solar systems and photovoltaic power generating systems and related improvements as more particularly described in the Engineering, Procurement And Construction Agreement, dated as of April 26, 2016, by and between the County and Sunpower Corporation, Systems to be acquired and installed in the Easement Area (subject to modification as provided in Section 5.2 hereof), and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant hereto. Whenever reference is made in this Agreement to Treatment Plant Solar Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Treatment Plant Solar Equipment.

“*Treatment Plant Solar Equipment Costs*” means the total cost of the Treatment Plant Solar Equipment, including related costs such as freight, installation and taxes, capitalizable costs, the interest components of the Sublease Payments during the period of acquisition and installation of the Treatment Plant Solar Equipment; *provided* that Treatment Plant Solar Equipment Costs shall not include any Delivery Costs with respect to the NCREBs Equipment Lease incurred in connection with the acquisition, installation and/or financing of the Treatment Plant Solar Equipment.

“*Wastewater System*” means the entire wastewater collection, treatment and disposal system owned and/or operated by the Sanitation District for Zone 2, including but not limited to all facilities, properties and improvements at any time owned or operated by the Sanitation District for the collection, treatment and disposal of wastewater within Zone 2, together with any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the Sanitation District.

“*Zone 2*” means the service zone of the Sanitation District designated “Lake of the Pines, Zone 2.”

Section 1.2 *Interpretation.* (a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.1 *Covenants, Representations and Warranties of the Sanitation District.* The Sanitation District makes the following covenants, representations and warranties to the County as of the Funding Date:

(a) *Due Organization and Existence.* The Sanitation District is a political subdivision duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to grant the Easement to the County and to enter into this Agreement and carry out and consummate all transactions contemplated hereby, and by proper action of its Board of Directors the Sanitation District has duly authorized the execution and delivery of the Easement and this Agreement.

(b) *Due Execution.* The representatives of the Sanitation District executing this Agreement have been fully authorized to execute the same under a resolution duly adopted by the Board of Directors of the Sanitation District.

(c) *Valid, Binding and Enforceable Obligations.* The Easement and this Agreement have been duly authorized, executed and delivered by the Sanitation District and constitute the legal, valid and binding agreements of the Sanitation District enforceable against the Sanitation District in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Easement and this Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Sanitation District is a party or by which it or its properties are otherwise subject or bound (including, without limitation, the Sanitation District Prior Financing Documents), or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Sanitation District.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the Sanitation District or of the voters of the Sanitation District, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Easement and this Agreement, or the consummation of any transaction therein or herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Sanitation District after reasonable investigation, threatened against or affecting the Sanitation District or the assets, properties or operations of the Sanitation District which, if determined adversely to the Sanitation District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Easement or this Agreement or upon the financial condition, assets, properties or operations of the Sanitation

District, and the Sanitation District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Easement or this Agreement or the financial condition, assets, properties or operations of the Sanitation District.

(g) *Essential Use.* Upon completion and acceptance, the Treatment Plant Solar Equipment will be essential to the proper, efficient and economic operation of the Sanitation District and serve an essential governmental function of the Sanitation District. The Sanitation District does not intend to sell or otherwise dispose of the Treatment Plant Solar Equipment or any interest therein prior to the last Sublease Payment (including the Extended Sublease Term) scheduled to be paid hereunder. The Sanitation District expects to make immediate use of the Treatment Plant Solar Equipment upon completion and acceptance thereof. The Sanitation District does not expect the need for the Treatment Plant Solar Equipment to diminish during the Sublease Term .

(h) *Insufficiency of Available Project Proceeds.* The Sanitation District will pay all Treatment Plant Solar Equipment Costs in excess of Available Project Proceeds out of its own funds within 30 days of a request therefor from the County accompanied by documentation of such costs reasonably satisfactory to the Sanitation District.

(i) *Ownership of Treatment Plant; Real Property Issues.* So long as the Sublease Term is in effect and/or any Sublease Payment remains outstanding, the Treatment Plant Solar Equipment is and will be acquired, installed and located in the Easement Area; and the Treatment Plant and the Easement Area are and at all times will be either owned by the Sanitation District as fee simple owner and for which the Sanitation District has good and marketable title, subject to the Easement and this Agreement or (ii) if conveyed by the Sanitation District, will be conveyed subject to the Easement and this Agreement. The Sanitation District covenants and agrees that in the event any lien, issue, claim or dispute arises with respect to the Sanitation District's legal title to the Treatment Plant or the County's interest in the Easement Area or the Treatment Plant Solar Equipment or access to the Treatment Plant Solar Equipment for inspection or repossession or any other matters relating to the Sanitation District's valid and marketable use or title to the Treatment Plant or the County's interest in the Easement Area or the Treatment Plant Solar Equipment or access to the Treatment Plant Solar Equipment (each of the foregoing referred to as a "Real Property Issue"), the Sanitation District will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue and/or provide the County with, or as applicable, will take all reasonable steps available to the Sanitation District to ensure the County has, adequate access to the Treatment Plant and the Easement Area for purposes of accessing, inspecting and/or repossessing (if necessary) any of the Treatment Plant Solar Equipment; and the Sanitation District shall ensure that its fee interest in the Treatment Plant is and remains free and clear of Real Property Issues. Notwithstanding any termination of this Agreement, the covenants in this Section 2.1(i) shall remain in effect and continue to inure to the benefit of the County and its assigns so long as any Sublease Payment remains outstanding or unpaid.

Section 2.2 *Covenants, Representations and Warranties of the County.* The County makes the following covenants, representations and warranties to the Sanitation District as of the Funding Date:

(a) *Due Organization and Existence.* The County is a political subdivision duly organized and existing under the laws of the State of California, has full legal right, power and

authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby, and by proper action of its Board of Supervisors the County has duly authorized the execution and delivery of this Agreement.

(b) *Due Execution.* The representatives of the County executing this Agreement are fully authorized to execute the same under official action taken by the Board of Supervisors of the County.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement has been duly authorized, executed and delivered by the County and constitutes the legal, valid and binding agreement of the County, enforceable against the County in accordance with its terms.

(d) *No Conflicts.* The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the County is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the County, which conflict, violation, breach, default, Lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the County.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the County, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the County after reasonable investigation, threatened against or affecting the County or the assets, properties or operations of the County which, if determined adversely to the County or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition, assets, properties or operations of the County, and the County is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the County.

### ARTICLE III

#### ACQUISITION AND INSTALLATION OF THE TREATMENT PLANT SOLAR EQUIPMENT

Section 3.1 *County to Acquire and Install Treatment Plant Solar Equipment; Payment.*

(a) Acting as the agent of the Authority pursuant to the Lease Agreement, the County has assumed all rights, liabilities, duties and responsibilities of the Authority regarding the acquisition and installation of the Treatment Plant Solar Equipment. The County, as agent of the Authority, has entered into or will enter into, administer and enforce all agreements relating to the acquisition and installation of the Treatment Plant Solar Equipment; and the County has ordered or shall order the Treatment Plant Solar Equipment and shall cause the Treatment Plant Solar Equipment to be delivered and installed in the Easement Area. The County shall pay Treatment Plant Solar Equipment Costs from Available Project Proceeds. In the event that the Treatment Plant Solar Equipment Costs exceed the Available Project Proceeds, the Sanitation District shall pay the amount of such excess to the County as provided for in Section 2.1(h). Any Available Project Proceeds in excess of the Treatment Plant Solar Equipment Costs shall be applied as set forth in the Lease Agreement.

(b) When all items of the Treatment Plant Solar Equipment have been delivered and installed and are available for the County's beneficial use and enjoyment, the County shall promptly accept such Treatment Plant Solar Equipment and evidence such acceptance in the manner described in the Lease Agreement. Once installed, no item of the Treatment Plant Solar Equipment will be moved or relocated from the Easement Area without the prior written consent of the NCREBs Lease Assignee.

Section 3.2 *Disposition of Excess Proceeds.* Excess Proceeds, if any, held by the County on the date identified for the disposition of excess moneys in Section 3.4 of the Lease Agreement shall be applied to prepay the principal component of Sublease Payments in whole or in part in inverse order of Sublease Payment Dates. The portion of such Excess Proceeds that are 10% or less of the original Available Project Proceeds shall be applied to prepay Sublease Payments at a prepayment price equal 100% of such Excess Proceeds plus accrued interest on such prepaid principal portion of Sublease Payments to the prepayment date. Any portion of the Excess Proceeds that exceeds 10% of the original Available Project Proceeds shall be applied to prepay Sublease Payments at a prepayment price equal 102% of such Excess Proceeds plus accrued interest on such prepaid principal portion of Sublease Payments to the prepayment date. Notwithstanding anything in this Section to the contrary the Sanitation District shall pay the County the prepayment premium (if any) and interest portion of Sublease Payments accrued to the prepayment date on such principal portion to be prepaid from funds legally available to the Sanitation District County for that purpose, but not from Available Project Proceeds.

### ARTICLE IV

#### SUBLEASE PAYMENTS; SUBSTITUTION AND RELEASE OF PROPERTY

Section 4.1 *Sublease of Treatment Plant Solar Equipment.* For and in consideration of the Sublease Payments and other amounts to be paid by the Sanitation District pursuant to this Agreement, the County hereby subleases the Treatment Plant Solar Equipment to the Sanitation District, and the Sanitation District hereby subleases the Treatment Plant Solar Equipment from the

County upon the terms and conditions set forth herein, such subleasing of the Treatment Plant Solar Equipment to be subject in all respects to the terms and provisions of the Lease Agreement.

Section 4.2 *Term.* The Sublease Term commences on the Funding Date and ends on the date on which all of the Sublease Payments have been paid in full. In the event that the obligation of the Sanitation District to pay Sublease Payments is abated for any period under Article VI, the Sublease Term shall automatically extend until such time as all Sublease Payments have been paid in full; *provided* that the Sublease Term shall, in any event, terminate no later than the date specified in the definition of said term in Section 1.1. The provisions of this Section 4.2 are subject to the provisions of Section 6.5 hereof.

Section 4.3 *Sublease Payments and Other Obligations.*

(a) *Obligation to Pay.* Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, if and to the extent that Net Revenues are available the Sanitation District agrees to pay to the County, its successors and assigns the Sublease Payments (denominated into components of principal and interest) in the amounts specified in the Sublease Payment Schedule, to be due and payable in immediately available funds on the Sublease Payment Dates specified in the Sublease Payment Schedule. The Sublease Payments payable in any Rental Period are for the beneficial use and enjoyment of the Treatment Plant Solar Equipment during such Rental Period. The interest components of the Sublease Payments have been calculated based on the NCREBs Rate, on the basis of a 360-day year of twelve 30-day months, reduced by the Sanitation District's Share of the anticipated amount of the County's applicable cash subsidy payments from the United States Treasury under Section 54A or 6431 of the Code (as currently in effect) with respect to the NCREBs Equipment Lease. In the event the amount of any such subsidy payment is greater or less than the anticipated amount, County shall adjust the interest components of the applicable Sublease Payment(s) accordingly and the Sanitation District shall pay the amount of the adjusted Sublease Payment(s). In addition to the Sublease Payments, if and to the extent that Net Revenues are available the Sanitation District shall also pay to the County a charge in such amount as the County may from time to time establish as the amount reasonably determined by the County as the costs paid or incurred by it in connection with (i) the financing of the Treatment Plant Solar Equipment and the administration and implementation of this Agreement and (ii) the maintenance of the Easement Area and the Treatment Plant Solar Equipment (the "*Administrative and Maintenance Charge*").

Except as provided in Section 6.2 or 6.3, the obligations of the Sanitation District to make the aforesaid payments from Net Revenues and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Treatment Plant Solar Equipment, any defects, malfunctions, breakdowns or infirmities in the Treatment Plant Solar Equipment, disputes with any vendor of the Treatment Plant Solar Equipment or the County, failure of any vendor to perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the vendor, or any accident, condemnation or unforeseen circumstances.

(b) *Effect of Prepayment.* If the Sanitation District prepays all Sublease Payments in full under Section 9.1 or 9.2, the Sanitation District's obligations hereunder with respect to such Sublease Payments will thereupon cease and terminate. If the Sublease Payments are prepaid in part from Excess Proceeds under Section 3.2, such prepayment shall be applied to repay the principal components of the remaining Sublease Payments as provided for in said Section.



(c) *Rate on Overdue Payments.* If the Sanitation District fails to make any of the payments required in this Section 4.3, the payment in default will continue as an obligation of the Sanitation District until the amount in default has been fully paid, and the Sanitation District agrees to pay the same with interest thereon at the Default Rate from the date of default to the date of payment. If any Sublease Payment or other amount payable hereunder is not paid by its due date, the Sanitation District shall pay an administrative late charge of 5% of the amount not timely paid or the maximum amount permitted by law, whichever is less.

(d) *Fair Rental Value.* The Sublease Payments and Administrative and Maintenance Charges coming due and payable each Rental Period hereunder constitute the total rental for the Treatment Plant Solar Equipment for such Rental Period, and the Sanitation District will pay such amounts in each Rental Period for and in consideration of the right of the anticipated or actual beneficial use and enjoyment of, and the anticipated or actual continued quiet use and enjoyment of the Treatment Plant Solar Equipment during each Rental Period. The Sanitation District and the County have agreed and determined that the total Sublease Payments and Administrative and Maintenance Charges are not in excess of the fair rental value of the Treatment Plant Solar Equipment at completion and acceptance. In making that determination, consideration has been given to the estimated fair market value of the Treatment Plant Solar Equipment at completion and acceptance, the replacement costs the Treatment Plant Solar Equipment at completion and acceptance, the costs of financing being incurred by the County with respect to the Treatment Plant Solar Equipment, other obligations of the County under the NCREBs Equipment Lease, the uses and purposes which may be served by the Treatment Plant Solar Equipment at completion and the benefits therefrom that will accrue to the Sanitation District and its rate payers.

(e) *Source of Payments; Covenant re Net Revenues.* The Sublease Payments and Administrative and Maintenance Charges are payable from Net Revenues, subject to the provisions of Articles VI and IX; and the Sanitation District covenants to take such action as is necessary to assure that its Net Revenues will be sufficient to provide funds sufficient and available to discharge its obligation hereunder in each of its fiscal years during the Sublease Term.

#### Section 4.4 *Title to and Security Interest in the Treatment Plant Solar Equipment.*

(a) *Title.* During the Sublease Term, all right, title and interest in and to each item of the Treatment Plant Solar Equipment shall be vested in the County immediately upon its payment for each item of Treatment Plant Solar Equipment or portion thereof, subject to the terms and conditions of the NCREBs Equipment Lease, and shall be vested in the Sanitation District upon the earlier of payment in full of the NCREBs Lease Payments or termination of the Easement. The Sanitation District shall at all times protect and defend, at its own cost and expense, its title in and to the Treatment Plant Solar Equipment from and against all claims, Liens and legal processes of its creditors, and keep all Treatment Plant Solar Equipment free and clear of all such claims, Liens and processes until such time as title to all Treatment Plant Solar Equipment passes to the Sanitation District.

(b) *Security Interest.* The Sanitation District acknowledges that, pursuant to the Lease Agreement, the County has granted to the Authority a first priority security interest constituting a first Lien on the Treatment Plant Solar Equipment and has authorized the Authority to file (and such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to the Authority, which the Authority deems necessary or appropriate to establish and maintain the Authority's security interest in the Treatment Plant Solar Equipment, including such

financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as the County.

(c) *Treatment of Treatment Plant Solar Equipment as Personal Property.* As and to the extent permitted by law, the Treatment Plant Solar Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Treatment Plant Solar Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to the Easement Area.

Section 4.5 *Quiet Enjoyment.* Throughout the Sublease Term, so long as the Sanitation District is not default hereunder, the County will provide the Sanitation District with quiet use and enjoyment of the Treatment Plant Solar Equipment and the Sanitation District will peaceably and quietly have and hold and enjoy the Treatment Plant Solar Equipment, without suit, trouble or hindrance from the County, except as expressly set forth herein. The Sanitation District shall, at the request of the County and at the County's cost, join in any legal action in which the County asserts its right to such possession and enjoyment to the extent the Sanitation District may lawfully do so. Notwithstanding the foregoing, the Sanitation District has the right to inspect the Treatment Plant Solar Equipment as provided in Section 7.2.

## ARTICLE V

### MAINTENANCE, TAXES, INSURANCE AND OTHER MATTERS

Section 5.1 *Maintenance, Utilities, Taxes and Assessments with respect to the Treatment Plant Solar Equipment.* Throughout the Sublease Term, as part of the consideration for the rental of the Treatment Plant Solar Equipment, and in order to ensure that the County maintains the Treatment Plant Solar Equipment in proper working order so that it may be used for its intended purpose, all improvement, repair and maintenance of the Treatment Plant Solar Equipment are the sole responsibility of the County, and the County will pay for or otherwise arrange for the payment of all utility and security services supplied to the Treatment Plant Solar Equipment and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Treatment Plant Solar Equipment resulting from ordinary wear and tear or want of ordinary care on the part of the County or any assignee or sublessee thereof (subject to being reimbursed therefor as an Administrative and Maintenance Charge). In exchange for the Sublease Payments, the Administrative and Maintenance Charges and the other amounts payable to it by the Sanitation District, the County agrees to provide beneficial use of the Treatment Plant Solar Equipment, as more specifically set forth herein. The Sanitation District waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the Sanitation District under the terms of this Agreement.

The County will also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Sanitation District or the County affecting the Easement Area and/or the Treatment Plant Solar Equipment; *provided* that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County is obligated to pay only such installments as are required to be paid during the Sublease Term as and when the same become due (subject to being reimbursed therefor as an Administrative and Maintenance Charge).

The County may, at the County's expense (subject to being reimbursed therefor as an Administrative and Maintenance Charge) and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the County notifies the Sanitation District that, in its reasonable opinion, by nonpayment of any such items the interest of the County in the Treatment Plant Solar Equipment will be materially endangered or the Treatment Plant Solar Equipment or any part thereof will be subject to loss or forfeiture, in which event the County will promptly pay such taxes, assessments or charges or provide the Sanitation District with full security against any loss which may result from nonpayment, in form satisfactory to the Sanitation District and the NCREBs Lease Assignee).

Section 5.2 *Modification of Treatment Plant Solar Equipment.* The County has the right, at its own expense (subject to being reimbursed therefor as an Administrative and Maintenance Charge), to make additions, modifications and improvements to the Treatment Plant Solar Equipment or any portion thereof. All additions, modifications and improvements to the Treatment Plant Solar Equipment will thereafter comprise part of the Treatment Plant Solar Equipment and become subject to the provisions hereof. Such additions, modifications and improvements may not in any way damage the Treatment Plant Solar Equipment, or cause the Treatment Plant Solar Equipment to be used for purposes other than those authorized under the provisions of state and federal law; and the Treatment Plant Solar Equipment, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The County will not permit any mechanic's or other Lien to be established or remain against the Treatment Plant Solar Equipment for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the County under this Section; *provided* that if any such Lien is established and the County first notifies the Sanitation District of the County's intention to do so, the County may in good faith contest any Lien filed or established against the Treatment Plant Solar Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and will provide the Sanitation District with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Sanitation District. The Sanitation District will cooperate fully in any such contest, upon the request and at the expense of the County (subject to being reimbursed therefor as an Administrative and Maintenance Charge).

Section 5.3 *Insurance.* The County is required by the Lease Agreement to maintain or cause to be maintained insurance against various risks in minimum amounts specified in the Lease Agreement. In addition to all other amounts payable by it to the County hereunder, the Sanitation District will pay to the County, within 30 days of its receipt of a request therefor, such amount as the County may from time to time determine to be the cost of maintaining such insurance that is reasonably allocated to the Treatment Plant Solar Equipment.

Section 5.4 *Federal or State Disaster Aid.* Should the Treatment Plant Solar Equipment be damaged or destroyed as a result of an event for which federal or State of California disaster aid is available, the Sanitation District and/or the County shall promptly apply for disaster aid. Any disaster aid proceeds received shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Treatment Plant Solar Equipment, or, at the option of the County and the Sanitation District, to prepay the Sublease Payments if permitted under the disaster aid program and the law.

Section 5.5 *Recordation of this Agreement.* The County shall, at its expense, cause this Agreement to be recorded in the office of the Nevada County Recorder on or before the Funding Date.

Section 5.6 *Liens.* The Sanitation District shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, deed of trust, security interest, pledge, Lien, charge, encumbrance or claim on or with respect to the Treatment Plant Solar Equipment (including the charge upon property purchased under conditional sales or other title retention agreements), other than Permitted Encumbrances. Except as expressly provided in this Article, the Sanitation District shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, Lien, charge, encumbrance or claim, for which it is responsible, if the same will arise at any time. The Sanitation District shall reimburse the County for any expense incurred by it in order to discharge or remove any such mortgage, deed of trust, security interest, pledge, Lien, charge, encumbrance or claim. The Sanitation District shall keep the Treatment Plant Solar Equipment free of all levies, Liens and encumbrances except those created by the NCREBs Equipment Lease, the Easement and this Agreement.

Section 5.7 *Environmental Covenants.* (a) The Sanitation District shall not be obligated to monitor compliance of the Treatment Plant Solar Equipment with applicable environmental or other laws, nor shall the Sanitation District have any obligations or responsibility to foreclose or otherwise further involve itself with the Treatment Plant Solar Equipment under any circumstance, including any instance where the Sanitation District is notified of any non-compliance of the Treatment Plant Solar Equipment with applicable environmental or other laws.

(b) To the greatest extent permitted by law, the Sanitation District and the County agree to hold harmless, indemnify and defend each other from and against any claim, demand, penalty, fee, Lien, damage, loss expense or liability resulting from (i) any breach of the representations and warranties made by it in this Agreement or any failure, for any reason to comply with environmental laws, rules and regulations, including reasonable attorneys' fees and costs of, or in preparation for, any trial or appellate review, and (ii) any actual or alleged Hazardous Substance contamination, including the clean-up of Hazardous Substances from the Treatment Plant Solar Equipment or any other properties resulting from any activities on the Easement Area during the County's ownership, possession or control of the Easement Area which directly or indirectly result in the Easement Area or any other property being contaminated with Hazardous Substances. This indemnity shall survive the termination of this Agreement and shall continue to inure to the benefit of the County and the Sanitation District notwithstanding any assignment of its other rights hereunder; *provided, however*, that the obligations of the Sanitation District under this Section are specifically limited to payment from such moneys of the Sanitation District as are available at such time from the proceeds of insurance, self-insurance and legally available funds.

(c) The Sanitation District acknowledges that so long as the County operates the Treatment Plant Solar Equipment, any Hazardous Substance generated, placed, housed or located on, under or in the Treatment Plant Solar Equipment, in the ordinary course of the County's operation of the Treatment Plant Solar Equipment, shall not violate this Agreement, so long as the County complies with all federal, State or local statutes, ordinances, rules, regulation or other laws applicable to the handling and disposal of such Hazardous Substances.

(d) As used herein, "*Hazardous Substance*" shall mean any hazardous, toxic or dangerous substance, waste, material or underground storage tanks that are or may become regulated

under any federal, State or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean-up.

Section 5.8 *Taxes and Other Governmental Charges with respect to the Treatment Plant Solar Equipment; Use and Maintenance of the Treatment Plant Solar Equipment.* (a) The County and the Sanitation District contemplate that the Easement Area and the Treatment Plant Solar Equipment will be used for governmental or proprietary purposes of the Sanitation District and the County and that the Easement Area and the Treatment Plant Solar Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of the Easement Area or any Treatment Plant Solar Equipment is nevertheless determined to be subject to taxation, the Sanitation District shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect thereto (subject to being reimbursed therefor as an Administrative and Maintenance Charge). The County shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as accrue during the Sublease Term (subject to being reimbursed therefor as an Administrative and Maintenance Charge).

(b) The County shall not install, use, operate or maintain the Treatment Plant Solar Equipment (or cause the Treatment Plant Solar Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the NCREBs Equipment Lease. The County shall pay all utility and other charges incurred in the use and maintenance of the Treatment Plant Solar Equipment (subject to being reimbursed therefor as an Administrative and Maintenance Charge). In addition, the County agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; provided that the County may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of the County and the Sanitation District, adversely affect the interest of the County in and to the Easement Area and/or the Treatment Plant Solar Equipment or its interest or rights under the NCREBs Equipment Lease.

(c) The County shall maintain, preserve and keep the Treatment Plant Solar Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. The Sanitation District shall have no responsibility to maintain, repair or make improvements or additions to the Treatment Plant Solar Equipment. In all cases during the Sublease Term and prior to the transfer return of the Treatment Plant Solar Equipment to the Sanitation District as provided in Section 8.2, the County agrees to pay any costs necessary for the manufacturer to re-certify the Treatment Plant Solar Equipment as eligible for manufacturer's maintenance upon the transfer of the Treatment Plant Solar Equipment as provided for in such Section (subject to being reimbursed therefor as an Administrative and Maintenance Charge). Except with respect to Treatment Plant Solar Equipment for which Sublease Payments have been abated pursuant to Section 6.2 or 6.3, and during the period of such abatement, the County agrees that it will (a) maintain, preserve and keep the Treatment Plant Solar Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; and (b) replace or rebuild any component of the Treatment Plant Solar Equipment that becomes permanently unfit for normal use or inoperable during the Sublease Term (herein, the "*Inoperable Component*") in order to keep the Treatment Plant Solar Equipment as a whole in good repair and working order during the Sublease Term. The County shall promptly notify the Sanitation District in writing when any major component of the Treatment Plant Solar Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. The County shall promptly replace or rebuild the

Inoperable Component with the same major component of comparable or improved make and model and that has at least equivalent value, utility and remaining useful life and is in as good operating condition as the Inoperable Component it is replacing. The Sanitation District shall have no responsibility to maintain, repair, replace, rebuild or make improvements or additions to the Treatment Plant Solar Equipment.

(d) The County shall not alter any item of Treatment Plant Solar Equipment or install any accessory, equipment or device on an item of Treatment Plant Solar Equipment if that would impair any applicable warranty, the originally intended function or the value of the Treatment Plant Solar Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on the Treatment Plant Solar Equipment, excluding temporary replacements, shall thereupon become subject to the security interest mentioned in Section 4.4.

(e) The County shall not create, incur, assume or permit to exist any mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever except for Permitted Encumbrances on the Easement Area or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of the County, which consent shall not be unreasonably withheld.

(f) If the County elects to replace any item of the Treatment Plant Solar Equipment (the "*Replaced Equipment*") pursuant to this Section, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation to the extent possible from Net Proceeds. The County shall grant to the NCREBs Lease Assignee a first priority security interest in any such Replacement Equipment. The County shall represent, warrant and covenant to the NCREBs Lease Assignee that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through the NCREBs Lease Assignee, and shall provide to the NCREBs Lease Assignee any and all documents as the NCREBs Lease Assignee may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to the NCREBs Lease Assignee evidencing the NCREBs Lease Assignee's security interest in the Replacement Equipment. The County and the Sanitation District hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Treatment Plant Solar Equipment" for purposes of this Agreement. The County shall complete the documentation of Replacement Equipment on or before the next Sublease Payment Date after the occurrence of a casualty event, or as soon as reasonably practicable thereafter, or exercise its option to prepay, to the extent possible from Net Proceeds, the obligations hereunder with respect to the damaged equipment in accordance with this Agreement.

Section 5.9 *Advances*. If the County fails to perform any of its obligations under this Article V, the Sanitation District may, but shall be under no obligation to, take any necessary action to cure the failure, including the advancement of money. All amounts so advanced by the Sanitation District shall be deducted from rent for the Sublease Term; and the County covenants and agrees to accept such amounts so advanced by the Sanitation District with interest thereon from the date advanced until paid at a rate equal to the Default Rate; *provided, however*, that any amount payable by the Sanitation District pursuant to this Section shall be payable solely from Net Revenues.