

CONSENT TO AGREEMENT

RECITALS

A. The City of San Diego ("CITY"), as LESSOR under the Ground Lease Agreement executed on September 1, 1996, ("MASTER LEASE") leased real property commonly known as the Reuben H. Fleet Space Theater and Science Center and all improvements located thereon ("PROPERTY"), to San Diego Space and Science Foundation, ("LESSEE") a California nonprofit corporation [SDSSF], for the development, operation, and maintenance of a space theater, including a gift shop and an indoor cafe, for thirty years.

B. SDSSF entered into a Sublease ("AGREEMENT") effective September 25, 2006 with San Diego Gas and Electric Company, a California Corporation (SDG&E). The AGREEMENT is attached to this Consent to Agreement ("CONSENT") and incorporated into this CONSENT by this reference.

AGREEMENT

CITY consents to the AGREEMENT on the following terms and conditions:

1. NO FURTHER CONSENT: This CONSENT shall not be deemed to be a consent to any subsequent subletting, agreement, or use, nor shall the terms and conditions of this CONSENT be construed to support similar terms and conditions in the future.
2. USE: This CONSENT is for that use of portions of portions of the leased premises located within the PROPERTY as set forth and more specifically described within the attached AGREEMENT. It is understood that the primary purpose of the use is for public education and the incidental purpose is in providing utilities.
3. SUBORDINATION: The AGREEMENT shall be subordinate to the MASTER LEASE in all respects, notwithstanding any provision of this CONSENT or the MASTER LEASE contrary to or in conflict with the AGREEMENT. The CITY is not bound by any term or condition in the AGREEMENT which in any way conflicts with or is additional to the provisions of the MASTER LEASE.
4. ASSIGNMENT: The AGREEMENT shall not be assigned without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the AGREEMENT.
5. CONSIDERATION: LESSEE's consideration under the AGREEMENT shall be subject to rent payable to the CITY at the rate of fifty (50%) percent of LESSEE's gross income from AGREEMENT. LESSEE shall notify CITY within thirty (30) days of any change in the amount of consideration received by LESSEE under the

AGREEMENT, and rent due CITY under this CONSENT and the MASTER LEASE shall be revised effective as of the date of the change in consideration.

6. HOLD HARMLESS: SDG&E agrees to defend, indemnify, protect and hold the CITY, its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SDG&E's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the subleased premises by SDG&E or the work and operations to be performed under the AGREEMENT by SDG&E, and all expenses of investigating and defending against the same; provided, however that SDG&E's duty to indemnify, defend and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees, and provided further, that if, pursuant to this section SDG&E defends the CITY to any action or proceeding regarding any claim or liability that, upon the conclusion of such action or proceeding and all available appeals, is established to arise from the sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees, then CITY shall, promptly upon demand reimburse SDG&E for all of its reasonable attorney's fees and costs incurred in the defense of the CITY to such action or proceeding and appeals.
7. INSURANCE: SDG&E shall be insured by an insurance carrier acceptable to the CITY and LESSEE against loss from commercial general liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be Two Million Dollars (\$2,000,000) per occurrence. SDG&E shall file with CITY on or before the execution of this CONSENT a copy of SDG&E's policy of insurance which shall name "THE CITY OF SAN DIEGO, its elected officials, officers, representatives, agents, and employees" as an additional insured. The policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. SDG&E may satisfy the insurance requirements set forth above under a self-insurance program for which SDG&E qualifies within the State of California. SDG&E at its sole discretion may at any time modify the levels of its self-insured retentions and deductibles, as long as the minimum requirements of the CITY are met. SDG&E will provide to CITY evidence of self-insurance upon reasonable request from CITY and prior to execution of this CONSENT.
8. EARLY TERMINATION: CITY reserves the right to withdraw its consent to the AGREEMENT at any time, and in its sole discretion, with thirty (30) days written notice as provided below. In the event of a termination of this CONSENT, CITY is not responsible for damages of any kind.
9. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other

provision of this CONSENT, AGREEMENT or the MASTER LEASE, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

10. NOTICES: Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to the parties as follows:

To CITY:

Real Estate Assets Director
City of San Diego
1200 Third Avenue, Suite 1700, M.S. 51A
San Diego, CA 92101

To LESSEE:

Craig Blower, COO
Reuben H. Fleet Science Center
P.O. Box 33303
San Diego, CA 92163

To SDG&E:

Paul Stapleton, Sustainable Technologies
San Diego Gas & Electric Company
8335 Century Park Court, CP12G
San Diego, CA 92123-1569

Any party entitled or required to receive notice under this CONSENT may by like notice designate a different address to which notices shall be sent.

11. COMPLIANCE WITH LAWS: SDG&E shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the use of the portion of the PROPERTY subleased by SDG&E as set forth in the AGREEMENT.
12. AUDIT: CITY reserves the right at any and all reasonable times to examine and audit LESSEE's books, records and accounts of all financial transactions related to the Reuben H. Fleet Space Theater and Science Center premises.
13. NO DISCRIMINATION: SDG&E shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in SDG&E's use of the PROPERTY as set forth in the AGREEMENT,

including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

14. RELATED ACTIONS: SDG&E and LESSEE acknowledge that CITY is consenting only to the AGREEMENT and not to any other use of the PROPERTY. By the granting of this CONSENT, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the PROPERTY. Discretionary action includes but is not limited to permits, rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the PROPERTY. LESSEE and SDG&E shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the PROPERTY, as are necessary to develop and operate the use contemplated by the AGREEMENT, all at no cost to CITY.
15. SAN DIEGO'S STRONG MAYOR FORM OF GOVERNANCE: All references to "City Manager" in this Agreement and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.
16. ACCESS: Due to safety concerns, the general public will not have access to the subleased space, except as part of a tour arrange through SDG&E, not withstanding the provisions of the MASTER LEASE.
17. AUTHORITY. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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THE CITY OF SAN DIEGO

Dated 12/18/06

By David Sandoval
David Sandoval,
Deputy Director, Real Estate Assets

SAN DIEGO SPACE & SCIENCE
CENTER

Dated 12/15/06

By Jeffrey W. Kirsch
Jeffrey W. Kirsch
Executive Director

SAN DIEGO GAS & ELECTRIC CORP.

Dated 12-15-06

By Joseph S. Velasquez
Joseph S. Velasquez
Director, Comm. & Ind. Services

APPROVED AS TO FORM AND
LEGALITY
MICHAEL J. AGUIRRE, City Attorney

Dated 12-19-06

By [Signature]
Deputy City Attorney

FACILITY SUBLEASE AGREEMENT

THIS FACILITY SUBLEASE AGREEMENT (this "**Sublease**") is made and entered into as of September 25, 2006 ("**Effective Date**") by and between the **SAN DIEGO SPACE AND SCIENCE FOUNDATION**, doing business as the Reuben H. Fleet Science Center, a California non-profit organization ("**Sublandlord**"), and **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation ("**Subtenant**"). Sublandlord and Subtenant are sometimes referred to in this Sublease individually as a "**Party**" or collectively as the "**Parties**." Defined terms are indicated by initial capital letters. Defined terms shall have the meaning set forth herein, whether or not such terms are used before or after the definitions are set forth.

RECITALS

WHEREAS, Sublandlord leases from the City of San Diego that real property identified as Assessor's Parcel Number 534-450-08 located in San Diego, San Diego County, California and more particularly described in Exhibit A attached hereto (the "**Property**") pursuant to that certain lease from the City of San Diego, with an effective date of September 1, 1996, attached hereto as Exhibit H and incorporated herein by this reference (the "**Underlying Lease**");

WHEREAS, this Sublease is subordinate to the Underlying Lease; and

WHEREAS, Sublandlord operates The Reuben H. Fleet Science Center, which is located on the Property at 1875 El Prado, San Diego, California, in a two story building on the Property (the "**Science Center**"); and

WHEREAS, subject to the prior written consent of the City of San Diego, Subtenant desires to sublease from Sublandlord and Sublandlord desires to sublease to Subtenant, the Subleased Space (as defined in Section 1 below) for the construction and operation of the Energy System (as defined in Section 2 below), subject to the terms and conditions of this Sublease; and

WHEREAS, the Sublandlord and the Subtenant desire to enter into that certain Energy Services Agreement, of even date herewith, between the Parties, which is attached hereto as Exhibit E (the "**ESA**") which provides for certain activities to be undertaken on the Subleased Space.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, incorporating all recitals and attachments and intending to be legally bound, the Parties agree as follows:

1. **Subleased Space Defined.** The Subleased Space comprises (a) approximately 12,500 aggregate square feet of the roof area of the Science Center, identified as "Subleased Space Site 1" ("**Subleased Space Site 1**"), and (b) approximately 50 square feet on the ground adjacent to the existing electrical service connections for the Science Center ("**Subleased Space Site 2**"). Subleased Space Site 1 and Subleased Space Site 2 shall be referred to herein collectively as the "**Subleased Space**". The location and dimensions of the Subleased Space within the Science Center are generally depicted and described in Exhibit B attached hereto.

The Subleased Space may be increased or decreased by mutual agreement of the Parties (with the consent of the City of San Diego) prior to the Effective Date, in which case the modified Site Plan and Subleased Space description will be executed by the Parties and attached to and made a part of this Sublease.

2. Sublease. Sublandlord hereby subleases to Subtenant and Subtenant hires from Sublandlord the Subleased Space. Subleased Space Site 1 shall be located on the roof of the Science Center and used for the installation of the equipment more particularly described in Exhibit C, including photovoltaic panels and a combiner box, and other Permitted Uses. Subleased Space Site 2 shall be located on the ground adjacent to the existing electrical service connections for the Science Center and shall be used for the operation electrical room and equipment more particularly described in Exhibit D. The equipment identified in Exhibits C and D shall be collectively referred to in this Sublease as the "Energy System."

3. Access to Subleased Space. Sublandlord hereby grants to Subtenant and such of Subtenant's affiliates, identified employees, agents, representatives, contractors, subcontractors and consultants as shall be identified in a writing from time to time from and after the Effective Date to Sublandlord (collectively, "**Subtenant Parties**") the right of ingress to and egress from the Subleased Space ("**Access**") during the hours of 8:30 AM to 5:00 PM, Monday through Friday, excluding Science Center scheduled administrative holidays, which shall include but not be limited to all days on which banks are closed in accordance with California law and shall be identified in a writing delivered to the Subtenant from time to time after the Effective Date ("**Business Hours**"), provided that Subtenant provides twenty-four (24) hours advance written notice of any such Access, except in the event of an emergency that requires immediate repairs to the Energy System, in which case Subtenant shall have the right of immediate Access to perform the emergency repairs, provided that Subtenant shall notify Sublandlord as soon as reasonably practicable after becoming aware of the emergency. Except in the event of an emergency that requires immediate repairs to the Energy System, Sublandlord shall have the right to direct Subtenant to reschedule such Access, if Subtenant or any Subtenant Parties' activities on the Property would materially adversely affect Sublandlord's or another Property occupant's operation or use of the Property, provided that Sublandlord notify Subtenant of such rescheduling at least twenty-four (24) hours prior to such proposed Access.

3.1 To the extent that Access requires Subtenant to pass through any portion of the Science Center, Access shall be allowed only through the south administrative stairwell of the Science Center or such other routes that are reasonably approved from time to time by the Sublandlord upon Subtenant request, provided that such Sublandlord approval may be subject to the consent of the City of San Diego. In no event shall the construction or operational activities of the Subtenant interfere with the daily operation of the Science Center. Subtenant will provide Subtenant Parties with identification and authority to Access the Subleased Space in a form that is reasonably acceptable to Sublandlord.

3.2 Access to the Subleased Space requiring passage through, on or over the Property by Subtenant Parties during times outside of Business Hours will require one (1) week prior notice unless for emergency or repair purposes. In the event of an emergency that requires immediate repairs to the Energy System, Subtenant shall notify Sublandlord as soon as reasonably practicable and be given permission to access the Property as quickly as reasonably

possible. In the event repair service is needed to restore operation of the Energy System, Subtenant shall provide Sublandlord twenty-four (24) hours advance written notice, except in the event of an emergency that requires immediate repairs to the Energy System. The Subtenant shall be solely responsible for obtaining any permission that may be necessary for Subtenant to access the Subleased Space that requires the use of any property owned by any party other than the Sublandlord, including but not limited to any Balboa Park land.

3.3 Upon Subtenant's written request at least twenty-four (24) hours in advance, Sublandlord shall provide permission to Subtenant and the Subtenant Parties to conduct tours during Business Hours for interested third parties. Tours shall be scheduled and conducted in a manner that is not disruptive to Sublandlord's business operations.

4. Energy Services Agreement. The terms of this Sublease shall be interpreted in a manner that is reasonably consistent with the ESA. In the event that a conflict arises between the terms of this Sublease and the ESA this Sublease shall control.

5. Permitted Use of Subleased Space. During the Term (as defined in Section 7 below), Subtenant shall have the exclusive right to use the Subleased Space for the construction, installation, operation, maintenance, repair, replacement, relocation, reconfiguration, reconstruction, removal, alteration, modification, substitution, improvement, upgrading, inspection, testing, monitoring, photographing videotaping, surveying, use and enjoyment of the Energy System and other necessary and incidental uses ("**Permitted Uses**"). Subtenant may (but shall not be obligated to) operate the Energy System on such days and at such times as Subtenant determines in its sole discretion. In no event shall Subtenant have any obligation to Sublandlord to operate the Energy System or generate power for the Property's use or benefit.

6. Initial Installation of Equipment Subtenant shall, at the expense of Subtenant, apply for and obtain all necessary permits and approvals ("**Permits**") to install and operate the Equipment. In connection with Permits, at the request of Subtenant, Sublandlord shall reasonably: (a) cooperate to obtain Permits; (b) join with Subtenant in all applications and proceedings; and (c) execute all agreements, easements and dedications required by government agencies, as a condition to the issuance of such Permits.

7. Term.

7.1 Initial Term. The obligation to pay Rent shall commence on the date that the installation of the Energy System is complete and the Energy System is operational ("**Rent Commencement Date**"). This Sublease shall expire on the date that is ten (10) years after the Rent Commencement Date unless extended in accordance with this Article 7. As used in this Sublease, the words "**Initial Term**" shall mean the period from the Effective Date until the date that is ten (10) years after the Rent Commencement Date. Within ten (10) calendar days after the Rent Commencement Date, Sublandlord and Subtenant shall execute and acknowledge a document setting forth the actual Rent Commencement Date, which shall be attached to and constitute a part of this Sublease. The failure of the Parties to attach such a document shall not affect the validity of this Sublease.

7.2 First Extension Option. Upon the expiration of the Initial Term, in the

event that the Sublandlord exercises the First Extension Option (as defined in the ESA) and thereby extends the Generation Phase (as defined in the ESA) pursuant to Section 2.3.2 (a) of the ESA, then the Initial Term shall automatically be extended for an additional period of five (5) years ("**First Extended Term**").

7.3 Second Extension Option. Upon the expiration of the First Extended Term, in the event that Sublandlord exercises the Second Extension Option (as defined in the ESA) and thereby extends the Generation Phase (as defined in the ESA) pursuant to Section 2.3.2 (a) of the ESA, then the First Extended Term of this Sublease shall automatically be extended for an additional period of five (5) years ("**Second Extended Term**").

7.4 Terms and Conditions of Extension. Any extension of the Initial Term upon the exercise of the First Extension Option and/or the Second Extension Option (each as defined in the ESA) under the ESA shall be subject to all of the terms and conditions of this Sublease. The Initial Term, the First Extended Term and the Second Extended Term shall be referred to in this Sublease collectively as the "**Term**".

7.5 Exercise of Extension Options. As set forth in Section 2.3.2(a) of the ESA, the First Extension Option may be exercised by delivery of written notice ("**Option Notice**") to Subtenant at least ninety (90) calendar days before the expiration of the Initial Term, and the Second Extension Option may be exercised by delivery of an Option Notice to Subtenant at least ninety (90) calendar days before the expiration of the First Extended Term. Upon any extension of the Initial Term or the First Extended Term, pursuant to this Section 7.3, then the Parties shall execute a written document acknowledging the extension of the Term, provided, however, that the failure to execute such a document shall not be a requirement or condition to the extension of the Term.

7.6 Early Termination. Notwithstanding anything to the contrary contained in Sections 7.1 and 7.2 above, if the ESA is terminated in accordance with Sections 2.2.1, 2.3.3, 2.3.4, 7.2, 14.2 or any other provision of the ESA, then the Term shall terminate as of the effective date of the termination of the ESA.

8. Rent. The Initial Term Rent (as defined below), the First Extended Term Rent (as defined below) and the Second Extended Term Rent (as defined below), together with all other amounts due from Subtenant to Sublandlord pursuant to this Sublease, shall be referred to herein as "Rent."

8.1 Initial Term Rent. Subtenant shall pay to Sublandlord rent for the entire Initial Term equal to the amount calculated by multiplying (a) the actual square footage of the Subleased Space as of the Effective Date, times (b) \$5.00 ("**Initial Term Rent**").

8.2 First Extended Term Rent. If Subtenant exercises the First Option, then Subtenant this Sublease is extended for the First Extension Term in accordance with Section 7.2 above, then Subtenant shall pay to Sublandlord rent for the entire First Extended Term an amount equal to the amount calculated by multiplying (a) the actual square footage of the Subleased Space as of the commencement of the First Extended Term, times (b) \$2.50 ("**First Extended Term Rent**").

8.3 Second Extended Term Rent. If Subtenant exercises the Second Option, then Subtenant this Sublease is extended for the Second Extension Term in accordance with Section 7.2 above, then Subtenant shall pay to Sublandlord rent for the entire Second Extended Term equal to the amount calculated by multiplying (a) the actual square footage of the Subleased Space as of the commencement of the Second Extended Term, times (b) \$2.50 ("Second Extended Term Rent").

8.4 Rent Payment. Subtenant shall pay Rent to Sublandlord in the form of a check or wire transfer. Subtenant shall pay the Initial Term Rent to Sublandlord within twenty (20) calendar days after the Rent Commencement Date in accordance with the ESA. If Subtenant exercises the First Option, then Subtenant shall pay the First Extended Term Rent to Sublandlord at the commencement of the First Extended Term. If Subtenant exercises the Second Option, then Subtenant shall pay the Second Extended Term Rent to Sublandlord at the commencement of the Second Extended Term. No late fees, interest or other charges will be assessed to Subtenant for late payments, however failure to pay required Rent within twenty (20) calendar days after written demand by Sublandlord shall constitute grounds for termination of this Sublease.

8.5 Refund of Prepaid Rent upon Early Termination. Upon any termination of this Agreement for any reason other than Subtenant's breach or default under the ESA or this Agreement, Sublandlord shall, within ninety (90) calendar days after the effective date of such termination, refund a portion of any Rent already paid by Subtenant to Sublandlord for any period subsequent to the effective date of such termination prorated on a monthly basis for the portion of the Initial Term that has been completed prior to such termination..

8.6 Holdover Tenancy. In the event that Subtenant shall hold the Subleased Space after the expiration of the Term hereof with the consent of Sublandlord, express or implied, such holding over, in the absence of written agreement on the subject, shall be deemed to have created a tenancy from month-to-month, terminable on thirty (30) calendar days' written notice by either Party to the other, upon a monthly rental hereinafter stated, but otherwise subject to all of the terms and provisions of this Sublease. Such monthly rental shall be computed on the basis of one hundred and fifty percent (150%) of the total Rental payable by Subtenant under this Sublease by Subtenant to Sublandlord for the period immediately preceding such holdover tenancy.

8.7 Surrender. Upon the expiration or sooner termination of this Sublease, Subtenant shall remove the Energy System (as provided in Section 10.2) and surrender the Subleased Space to Sublandlord free of trash and debris and in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Subtenant excepted, provided, however, that in the event that Sublandlord acquires the Energy System in accordance with Section 2.3.2(b) of the ESA, Subtenant shall not be obligated to remove the Energy System. If Subtenant fails to surrender the Subleased Space upon the termination or expiration of this Sublease, in addition to any other liabilities to Sublandlord accruing therefrom, Subtenant hereby agrees to indemnify and hold Sublandlord harmless from direct claims, demands, losses, liabilities, costs, expenses, causes of action, lawsuits, obligations, liens, fines or penalties (including, without limitation, reasonably attorney's fees) (collectively, "Claims") resulting from such failure including, but not limited to, any Claims made by any succeeding

subtenant based upon Subtenant's failure to surrender, provided, however, that in no event shall Subtenant be liable or responsible for indirect, consequential, special or punitive damages, and Sublandlord hereby waives the same.

9. Required Operating Permits. Subtenant shall, at its sole expense, maintain in full force and effect all applicable entitlements, certificates, permits and other approvals required in connection with the Energy System ("Required Operating Permits") by any federal, state or local governmental authorities having jurisdiction over Subtenant or the Subleased Space ("Governmental Authorities"). Sublandlord shall not oppose in any manner any application by Subtenant for such Required Operating Permits and shall provide Subtenant with such timely assistance (without cost to Sublandlord) as Subtenant may reasonably request in connection with submitting applications for and obtaining such Required Operating Permits.

10. Subtenant's Property.

10.1 Ownership. Subtenant shall retain ownership of any and all fixtures, equipment, improvements and personal property of any kind whatsoever placed on or affixed to the Subleased Space by Subtenant at any time, including but not limited to the Energy System (collectively, "**Subtenant's Personal Property**"), provided, however, that Sublandlord shall have the option to purchase the Energy System upon the expiration of the Generation Phase (as defined in the ESA) in accordance with Section 2.3.2(b) of the ESA. Sublandlord, at the Subtenant's request, agrees to execute and deliver to Subtenant such documents as SDG&E may reasonably request to document that Sublandlord has no ownership interest in the Energy System and upon Subtenant's request, Sublandlord shall deliver to Subtenant's lender a consent to Subtenant financing related to Subtenant Property substantially in the form attached as Exhibit F.

10.2 Removal. Upon the termination of this Sublease for any reason, Subtenant shall, within one hundred and twenty (120) calendar days after the effective date of such termination, remove Subtenant's Property from the Subleased Space, provided, however, that if Sublandlord exercises the option to purchase the Energy System in accordance with Section 2.3.2(b) of the ESA, then Subtenant shall not have any obligation to remove the Energy System from the Subleased Space, and provided, further, that regardless of whether Sublandlord exercises the option to purchase the Energy System in accordance with Section 2.3.2(b) of the ESA, Subtenant shall not be required to remove any concrete pads or other permanent facilities permanently installed to accommodate the Energy System in any case. Any removal of Subtenant's Property shall be at Subtenant's sole expense except as may otherwise be provided in Sections 2.2.1(b) and 2.4 of the ESA. Subtenant shall exercise reasonable care in removing Subtenant's Property and shall repair any damages to the Subleased Space or the Science Center resulting from such removal at Subtenant's sole cost.

10.3 Subtenant Failure to Remove. If Subtenant fails to remove any of Subtenant Property within one hundred twenty (120) calendar days after the effective date of such expiration or the sooner termination of this Sublease, Sublandlord may remove and dispose of all or any portion of such Subtenant Property, in which event Subtenant shall, upon demand, pay to Sublandlord the actual expense of such removal and disposition together with the cost of repair of any and all damage to the Subleased Space resulting from or caused by such removal, provided, however, that if Sublandlord exercises the option to purchase the Energy System in

accordance with Section 2.3.2(b) of the ESA, then Subtenant shall not have any obligation to remove the Energy System from the Subleased Space.

10.4 Personal Property Tax. Subtenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its trade fixtures, merchandise and other personal property in or upon the Subleased Space. In the event any such items of property are assessed with the property of Sublandlord, such assessment shall be divided between Sublandlord and Subtenant to the end that Subtenant shall pay only its equitable portion of such assessment as reasonably determined by Sublandlord.

11. Subtenant Construction and Alterations.

11.1 Permitted Alterations. Sublandlord agrees that the initial design and installation of the Energy System shall be governed by the ESA. After the initial design and installation of the Energy System, Subtenant shall have the right to maintain, make adjustments, enhance, repair, replace and change the Energy System without the necessity of obtaining Sublandlord's consent, so long as such work does not constitute a Major Alteration (as defined below). With respect to alterations, additions and changes in and to the Subleased Space, Sublandlord agrees that Subtenant may, from time to time after the Effective Date, at Subtenant's sole cost and expense and after giving Sublandlord at least thirty (30) days' prior written notice of its intention to do so, make such alterations, additions and changes in and to the Equipment and the Subleased Space (except those of a structural nature) as Subtenant may find necessary or convenient, provided that such alterations, additions and changes do not constitute a Major Alteration (as defined below). In no event shall Subtenant make any of the following unless and until the written consent of Sublandlord shall first have been obtained, (i) any alteration, addition or change that diminishes the value of the Subleased Space, (ii) any alteration, addition or change to the Subleased Space (and not merely the Energy System) that costs in excess of Ten Thousand Dollars (\$10,000.00), (iii) any alterations, additions or changes to the structure, or the exterior walls or roof of the Science Center, (iv) any alterations, additions or changes that affect or change the exterior appearance of the Science Center, (v) any alterations or changes that require the erection of any platforms or increase the size of existing platforms or (vi) any alterations, additions or changes that make or cause to be made any penetration through the roof or walls of the Science Center or the Subleased Space (each a "**Major Alteration**").

11.2 Manner of Construction. All Major Alteration shall be under the supervision of a licensed contractor or licensed architect or licensed structural engineer and shall be made in accordance with plans and specifications with respect thereto, approved in writing by Sublandlord (which shall not be unreasonably withheld, conditioned or delayed) before the commencement of the Major Alteration. Failure of Sublandlord to disapprove any such plans and specifications within fifteen business (15) days of submission shall be deemed its approval of same. All work with respect to any alterations, additions or changes must be done in a good and workmanlike manner and diligently prosecuted to completion. Upon completion of any Major Alteration, Subtenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 3093 of the Civil Code of the State of California or any successor statute. Major Alterations or any portion or part of any Major Alterations, at Sublandlord's option, exercisable by delivery of written notice not less

than sixty (60) calendar days prior to the scheduled expiration of the Term, shall be removed by Subtenant, at Subtenant's sole cost and expense, at the expiration or termination of this Sublease. If Sublandlord elects to cause Subtenant to remove all or any portion of the Major Alterations, Subtenant shall repair any damages to the Subleased Space resulting from such removal, as a part of such work. Any alterations, additions or improvements to the Subleased Space by Subtenant shall be made by Subtenant at Subtenant's sole cost and expense. All materials used in any alterations or changes to the Subleased Space, including without limitation the work to be performed by Subtenant under Exhibits "C" and "D" shall be new or like new quality and condition. Any such alterations, additions or changes shall be performed and done strictly in accordance with the laws and ordinances relating thereto. In performing the work of any such alterations, additions or changes, Subtenant shall have the work performed in such manner as not to obstruct the access to the Science Center. Subtenant shall furnish Sublandlord with a copy of all applicable construction permits and plans for Major Alterations.

11.3 Construction Insurance. Subtenant agrees to carry "General Liability" insurance in an appropriate amount covering the construction of all Major Alterations including, without limitation, all work to be performed by Subtenant under Exhibits "C" and "D" hereof, and such other insurance as Sublandlord may reasonably require; it being understood and agreed that all such work shall be insured by Subtenant pursuant to Section 22.6 immediately upon completion thereof. In addition, in the case of Major Alterations including, without limitation, all work required of Subtenant under Exhibit "C" hereof, Sublandlord may, in its discretion, require Subtenant to obtain a lien and completion bond or some alternate form of security satisfactory to Sublandlord in an amount equal to one hundred fifty percent (150%) of the estimated cost of the Subtenant Improvements to assure the lien free completion of such Subtenant improvements.

11.4 Mechanics' Liens. Subtenant agrees that it will pay, or cause to be paid, all costs for work done by it on the Subleased Space and that it will keep the Subleased Space and the other portions of the Property, the Science Center and Subtenant's leasehold estate in and to the Subleased Space free and clear of all mechanics' liens and other liens for or arising from work done or alleged to have been done by or for Subtenant or for persons claiming under it provided, however, that Subtenant may dispute such liens provided that Subtenant posts a bond in accordance with applicable law. Subtenant agrees to and shall indemnify and save Sublandlord free and harmless from and against any and all claims, demands, liability, loss, damage, costs, reasonable attorneys' fees, and all other Claims on account of claims of contractors, subcontractors, laborers, material men or others for work performed, or alleged to have been performed, or materials or supplies furnished, or alleged to have been furnished to Subtenant or persons claiming under it, provided, however, that Subtenant shall have posted a bond as set forth in the preceding sentence, Sublandlord shall look solely to the bond to satisfy such Claims, and provided, further, that in no event shall Subtenant be responsible or liable for any indirect, consequential, special or punitive damages, and Sublandlord hereby waives the same. Should Subtenant receive actual notice that any claim of lien be filed against the Subleased Space or any other portion of the Science Center or the Property or Subtenant's leasehold estate in and to the Subleased Space or any action affecting the title to such property be commenced arising out of any work performed or alleged to have been performed by or under Subtenant, Subtenant shall forthwith give Sublandlord written notice thereof.

12. Maintenance.

12.1 Subtenant's Obligations. By entry hereunder, Subtenant shall be deemed to have accepted the Subleased Space as being in good, sanitary order, condition and repair (except for latent defects or defects that would not be obvious from a visual inspection of the Subleased Space). During the Term, Subtenant shall, at Subtenant's sole expense, maintain the Subleased Space in clean condition and good repair, and shall perform all items of repair, maintenance and improvement or reconstruction as may at any time or from time to time be required with respect to the Subleased Space by any governmental agency having jurisdiction, provided, however, that except to the extent directly caused and necessitated by the presence of the Energy System within the Subleased Space, or by reason of the negligence or willful misconduct of Subtenant or the Subtenant Parties, or by reason of the failure of Subtenant to perform or observe any conditions or agreements in this Sublease contained, or by reason of alterations, additions or improvements to the Subleased Space made by Subtenant or anyone claiming under Subtenant, Subtenant shall not be responsible or liable for (i) damage caused by the sole negligence or willful misconduct of Sublandlord or its employees, contractors, subcontractors, consultants, invitees, permittees or other lessees, (ii) damage caused by any defects in the design or construction of the Science Center or Subleased Space, or materials used in the Science Center or Subleased Space, (iii) reasonable wear and tear, (iv) maintenance or repair of exterior or interior walls, the roof, structural systems, interior surfaces of ceilings and floors, plumbing systems, window glass, plate glass, doors, heating ventilation and air conditioning systems, electrical systems, mechanical systems or the parking lot, (v) damage due to fire, earthquake, hurricane, tornado, tsunami, acts of God, terrorist act, civil unrest, war or other casualty (collectively, "**Casualty**") to the extent not expressly required to be insured by Subtenant under this Sublease, (vi) the failure of the Science Center or the Subleased Space to comply with applicable laws, statutes, ordinances, codes, regulations, rules, edicts or decrees, including, without limitation, the Americans with Disabilities Act of 1990, and/or (vii) any failure of Sublandlord to comply with this Sublease (collectively, "**Excluded Obligations**"). Subtenant shall be solely responsible for structural maintenance and/or repairs resulting from the presence of the Energy System. Subtenant shall be solely responsible for structural maintenance and/or repairs to the extent directly caused and necessitated by the presence of the Energy System within the Subleased Space, or by reason of the sole negligence or willful misconduct of Subtenant or the Subtenant Parties, or by reason of the failure of Subtenant to perform or observe any conditions or agreements in this Sublease contained, or by reason of alterations, additions or improvements to the Subleased Space made by Subtenant or anyone claiming under Subtenant.

12.2 Sublandlord's Obligations. Subject to the foregoing paragraph, Sublandlord shall, at Sublandlord's sole expense, maintain the Property (other than the Subleased Space) in clean condition and good repair, and Sublandlord shall, at Sublandlord's sole expense, perform all structural maintenance and repairs required with respect to the building, structure or improvement upon which the Energy System is located. Notwithstanding the foregoing, Sublandlord shall not be required to make any repairs to the extent directly caused or necessitated by the presence of the Energy System within the Subleased Space, or by reason of the negligence or willful misconduct of Subtenant or Subtenant Parties, or by reason of the failure of Subtenant to perform or observe any conditions or agreements in this Sublease contained, or caused by reason of any alterations, additions or improvements made by Subtenant or anyone claiming under Subtenant. Anything to the contrary notwithstanding contained in this

Sublease, Sublandlord shall not be liable to Subtenant for failure to make repairs as herein specifically required of it unless Subtenant has previously notified Sublandlord, in writing, of the need for such repairs and Sublandlord has failed to commence and complete said repairs within a reasonable period of time following receipt of Subtenant's written notification or thereafter has failed to diligently prosecute such repairs to completion. The provisions of Section 1942 of the Civil Code of the State of California or any analogous statute in any other jurisdiction, if applicable, specifically are waived by Subtenant.

12.3 Structural Maintenance. If Sublandlord determines that any structural maintenance or repairs are required within the Subleased Space, then Sublandlord shall deliver prior written notice to Subtenant, describing in reasonable detail the work to be performed, within a reasonable period of time (but in any event not less than ten (10) business days) prior to the performance of such structural maintenance or repairs. Sublandlord shall not, without Subtenant's prior written consent, move, modify, remove, adjust, alter, change, replace, reconfigure or operate the Energy System except if there is an occurrence reasonably deemed by Sublandlord to be a bona fide emergency of which Sublandlord will notify Subtenant immediately. In the event that maintenance to the Property by Sublandlord requires access to the Subleased Space that will disturb the Energy System, Subtenant will provide such assistance as reasonably necessary to allow such access, as coordinated by both Parties so as to minimize, to the extent possible, disturbance to the Energy System. Sublandlord shall use care to protect and preserve the Energy System from damage, harm and theft. Sublandlord shall be responsible for damage to the Energy System directly caused by the sole negligence or willful misconduct of Sublandlord, Sublandlord's employees, agents, representatives, contractors, subcontractors or consultants (collectively, "Sublandlord Parties") and /or Sublandlord's guests, invitees, other lessees, licensees or permittees, and shall pay all costs to repair any damage to the Energy System caused by the parties within ninety (90) calendar days after delivery of an invoice for such costs by the Subtenant to Sublandlord, unless Sublandlord provides written notice to Subtenant within thirty (30) calendar days of receipt of such invoice that it disputes such liability, in which case the Parties shall engage in the dispute resolution procedures set forth in Section 13 of the ESA. Sublandlord shall not be responsible for damage to the Energy System caused by acts of nature or any other causes beyond the Sublandlord's reasonable control. Subtenant shall be responsible for any damage to Property caused by Subtenant Parties and/or Subtenant's guests, invitees, lessees, licensees, and permittees, and shall pay all costs to repair any damage to the Property caused by such parties within ninety (90) calendar days after delivery of an invoice for such costs by Sublandlord to Subtenant, unless Subtenant provides written notice to Sublandlord within thirty (30) calendar days of receipt of such invoice that it disputes such liability, in which case the parties shall engage in the dispute resolution procedures set forth in Section 13 of the ESA.

12.4 Grant of License. Subtenant hereby grants to Sublandlord such licenses and/or easements in, over, and under the Subleased Space or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits, shafts, pipes or other facilities to serve any other portion of the Science Center, provided, however, that Sublandlord shall provide Subtenant with not less than thirty (30) calendar days prior notice and an opportunity to comment on such licenses and/or easements to limit unnecessary interference with the Energy System, and provided, further, that that Sublandlord shall pay for any alteration required on or to the Subleased Space as a result of any such exercise, occupancy under or

enjoyment of any such license or easement, and provided, further, that such license or easement shall be subordinate to this Sublease and no exercise, occupancy under or enjoyment of such license or easement shall diminish Subtenant's rights under this Sublease or result in any unreasonable permanent interference, hindrance, impairment or conflict with Subtenant's use, occupancy or enjoyment of the Subleased Space as contemplated by this Sublease, and provided, further, that any work performed by Sublandlord pursuant to such license or easement shall be subject to the requirements and provisions set forth in Section 12.3 above. Without limiting the generality of the foregoing, subsequent to the installation of the Energy System, Sublandlord shall not cause or permit any equipment, facilities and/or structures to be constructed or installed in the area surrounding the Energy System that will cast a shadow on the Energy System or otherwise interfere with the operation of the Energy System without the prior consent of the Subtenant, which shall not be unreasonably withheld, delayed or conditioned.

13. Subordination to Financing, Attornment

13.1 Subordination. This Sublease is subject and subordinate to all ground and/or other underlying leases including sale and leaseback leases, mortgages and deeds of trust or other encumbrances which now and as of the Effective Date affect the Property, the Science Center, the Subleased Space or any portion thereof, together with all renewals, modifications, consolidations and/or extensions thereof. In the event that the lessor under any such lease or the holder or holders of any such mortgage, deed of trust or other encumbrance shall advise Sublandlord that it or they desire that this Sublease be prior and superior thereto or that it or they desire the option to make this Sublease prior and superior thereto, upon written request of Sublandlord to Subtenant, Subtenant agrees to promptly execute, acknowledge and deliver any and all commercially reasonable documents or instruments which Sublandlord or such lessor, holder or holders deem necessary or desirable in connection therewith.

13.2 Future Encumbrance. At Sublandlord's request, Subtenant shall execute a commercially reasonable subordination, non-disturbance and attornment agreement, whereby this Sublease shall become subject and subordinate to any and all ground and/or other underlying leases, including the sale and leaseback leases, mortgages and deeds of trust which may hereafter be executed covering the Property, the Science Center, and the Subleased Space or any portion thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advance, together with interest thereon, and subject to all the terms and provisions thereof, in exchange for which the lessee under the ground lease or other lease or the holder of the mortgage or deed of trust shall agree not to disturb Subtenant's possession of the Sublease Space so long as Subtenant is not in breach or default under this Sublease. Subtenant agrees, within ten (10) days after Sublandlord's written request therefor, to execute, acknowledge and deliver upon request any and all commercially reasonable documents or instruments which Sublandlord or the Lessor under any such underlying lease or the holder or holders of any such mortgage or deed of trust deem necessary or desirable to assure the subordination of this Sublease to any such mortgage, deed of trust or leasehold estate, to confirm the lessee's or the holder's agreement not to disturb Subtenant's possession of the Subleased Space and to confirm Subtenant's agreement to attorn in Section 13.3.

13.3 Attornment. Subject to Section 13.4 below, Subtenant hereby attorns and agrees to attorn to any person, firm or corporation purchasing or otherwise acquiring

Sublandlord's interest in the Property, the Science Center, the Subleased Space or any portion thereof, at any sale or other proceeding or pursuant to the exercise of any rights, powers, or remedies under such mortgages or deeds of trust or ground or underlying leases as if such person, firm or corporation had been named as Sublandlord herein.

13.4 Non-Disturbance. The foregoing provisions of this Section to the contrary notwithstanding and so long as Subtenant is not in default hereunder, this Sublease shall remain in full force and effect for the full Term, notwithstanding the foreclosure of any deed of trust, mortgage or lease to which Subtenant has subordinated this Sublease under Section 13.2, unless Subtenant expressly agrees to the contrary, in writing. In the event that this Sublease will continue in effect following the foreclosure of any mortgage or deed of trust having priority to this Sublease or the termination of Sublandlord's leasehold estate in and to the Subleased Space, if any, as provided in the preceding sentence or pursuant to any instruments or documents entered into by Subtenant pursuant to Sections 13.1 or 13.2, Subtenant agrees that the parties succeeding to Sublandlord's interests under this Sublease will not be (i) responsible for any act or omission of a prior Sublandlord, except to the extent that such act or omission is of a continuing nature that constitutes a breach or default under this Sublease, in which case such successor in interest shall be responsible to the extent that such breach or default continues after the time that such successor in interest succeeds to Sublandlord's interests under this Sublease, (ii) subject to any offsets or defenses which Subtenant might have against any prior Sublandlord, unless such offsets or defense are expressly permitted under this Sublease, (iii) bound by any rent or additional rent which Subtenant may have paid in advance to any prior Sublandlord, other than the current month's rental paid in advance, or for any lease security deposit or any other sums deposited with the original or any prior Sublandlord, unless delivered to such successor in interest, or (iv) bound by any amendment or modification of this Sublease made without the prior written consent of such mortgagee, trust deed beneficiary or Lessor.

13.5 Estoppel Certificate. If in connection with any sale, assignment or hypothecation of the Property, the Science Center or the Subleased Space by Sublandlord, an estoppel statement shall be required from Subtenant, or if Sublandlord shall otherwise request an estoppel certificate, Subtenant agrees to deliver in recordable form within ten (10) days after written request therefor by Sublandlord, an estoppel statement in a form reasonably required by Sublandlord together with such additional certifications as to such other matters as Sublandlord may reasonably require, provided, however, that Subtenant shall not be required to execute any estoppel certificate that amends or modifies the Sublease or expands or diminishes either Party's rights or obligations under this Sublease or purports to act as a subordination of this Sublease. Subtenant's failure or refusal to timely execute such certificate, or such other certificate shall constitute an acknowledgment by Subtenant that the statements in such certificate are true and correct without exception.

14. Transfer of Property by Sublandlord. In the event of any sale, exchange or other conveyance of Sublandlord's interest in the Property or the Science Center or any portion or portions thereof by Sublandlord and an assignment by Sublandlord of this Sublease and an express assumption of Sublandlord's obligations under the Sublease by the assignee, Sublandlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Sublease arising out of any act, occurrence or omission relating to the Subleased Space or this Sublease occurring after the consummation of

such sale, exchange or other conveyance and assignment.

15. Quiet Enjoyment. Upon Subtenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Subtenant's part to be observed and performed hereunder, Subtenant shall have quiet possession of the Subleased Space during the Term, free of interference by Sublandlord or those lawfully claiming by or under Sublandlord, subject, however, to all of the provisions of this Sublease, to matters of record and to all applicable governmental laws, rules and/or regulations.

16. Landscaping and Visibility Restrictions. The Subtenant shall, at Subtenant's sole expense design and install all equipment and improvements permitted under this Sublease and after the initial installation of the Energy System during the Term, Subtenant shall, at Subtenant's sole expense, comply with all requirements of the Sublandlord and/or the City of San Diego under the provisions of the Underlying Lease or otherwise to screen the Energy System from view by the public. This shall include but not be limited to providing landscaping or other screening for the Energy System that Sublandlord reasonably requires at the time of initial installation of initial system or future Subtenant Major Alteration.

17. Utility Costs. Subtenant shall pay all utility costs and fees in connection with the Energy System incurred by Sublandlord within thirty (30) days after receipt of written notice from Sublandlord, together with a copy of the utility bill for such charges. Sublandlord shall pay all utility costs and fees, normally incurred by Sublandlord in connection with the Property.

18. Compliance with Law. All operations by Subtenant in connection with the Energy System or within the Subleased Space shall be in compliance with all regulations and requirements of the California Public Utilities Commission, as well as any other applicable state, federal or local statutes, codes, laws, ordinances, rules, regulations, orders, decrees, directives, judgments, permits and requirements ("**Legal Requirements**"), provided, however, that minor violations of Legal Requirements that do not result in a material adverse effect on the Sublandlord, the Property occupant, the Property or the Subleased Space shall not constitute a default under this Sublease.

18.1 No Interference by Subtenant. Subtenant shall conduct its activities within the Subleased Space in a manner designed to minimize any interference with the access to or activities of Sublandlord within the Property, including without limitation in the Science Center.

19. Condition of Property. If, during construction of the Energy System, Subtenant, or Sublandlord encounters or otherwise becomes aware of conditions within the Subleased Space that are (a) subsurface or otherwise concealed physical conditions that are at variance with those indicated in documents or other information furnished by Sublandlord or any Sublandlord Party to Subtenant or any Subtenant Party, or (b) unknown physical conditions of an unusual nature that are at variance with those ordinarily found to exist and generally recognized as inherent in construction activities of a similar character to the construction of the Energy System, then the observing Party shall promptly, but in no event later than thirty (30) calendar days after the first observance of such conditions, deliver written notice of such conditions to the other Party. Sublandlord and Subtenant shall promptly investigate any such condition and, where appropriate, approve equitable changes to the ESA and/or this Sublease, which shall be documented in a

written amendment.

20. Environmental Provisions.

20.1 Definitions.

20.1.1 "Environmental Law" shall mean any applicable Legal Requirement which as of the date of this Sublease relates in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety), including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (29 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Hazardous Materials Transportation Act (49 USC §§1801 et seq.), and applicable regulations or rules promulgated thereunder.

20.1.2 "Hazardous Material" shall mean any chemical, substance, material, controlled substance, object, condition, solid or hazardous waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or affects, including but not limited to any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined above), oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which as of the date of this Sublease are listed, defined or regulated in any manner by any applicable federal, state or local Environmental Law (as that term is defined above). For purposes of this Sublease, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

20.1.3 Hazardous Materials Indemnity by Subtenant. To the fullest extent permitted by applicable law, Subtenant shall indemnify, defend and hold harmless Sublandlord and the Sublandlord Parties from and against any and all Claims arising out of or resulting from Hazardous Materials brought to the Property or generated on the Property by Subtenant and released or spilled during the installation or operation of the Energy System, excluding any Claims to the extent solely arising out of or resulting from the sole negligence or willful misconduct of Sublandlord and/or any Sublandlord Party, provided, however, that in no event shall Subtenant be responsible or liable for any indirect, consequential, special or punitive damages, and Sublandlord hereby waives the same.

20.1.4 Sublandlord Hazardous Materials Representation. To

Sublandlord's actual knowledge no Hazardous Materials are present on the Subleased Space in violation of applicable law. In this Sublease, the term "to Sublandlord's actual knowledge" and like phrases mean the actual present and conscious awareness or knowledge of Craig Blower, Sublandlord Chief Operating Officer, without any duty of inquiry or investigation; provided that so qualifying Sublandlord's knowledge shall in no event give rise to any personal liability on the part of any officer or employee of Sublandlord, on account of any breach of any representation made by Sublandlord herein.

21. Indemnification and Waiver

Subtenant agrees that neither Sublandlord nor Sublandlord Parties shall be liable for any damage or liability of any kind, or for any injury to or death of persons, or damage to property of Subtenant or any other person from and after the Effective Date, from any cause whatsoever, resulting from the Subtenant's or Subtenant Parties' use, occupation or enjoyment of the Premises or the operation of Subtenant's business therein or therefrom by Subtenant or any person holding under Subtenant or by Subtenant's Parties. To the fullest extent permitted by law, Subtenant hereby further agrees to defend, indemnify and save harmless Sublandlord and Sublandlord Parties from all such liability Claims, including, without limitation, Claims for any real or claimed damage or injury and from all liens, claims, demands, liabilities and/or obligations to the extent that they arise out of the Subtenant's or Subtenant Parties' use of the Premises and its Subleased Space and/or the Energy System, or the conduct of Subtenant's business, any repairs or alterations which Subtenant may make upon the Subleased Space and any claims of any employee of Subtenant against Sublandlord or Sublandlord Parties, except to the extent such claims, damages, expenses, or liabilities result from the sole negligence or willful misconduct of Sublandlord. Subtenant shall further indemnify and hold harmless Sublandlord and Sublandlord Parties against and from any Claims directly arising from Subtenant's breach or default in the performance of any obligations on Subtenant's part to be performed under the terms of the Sublease, or arising from any act, neglect, fault or omission of Subtenant, or its agents, contractors, employees, or invitees or from any release of Hazardous Materials as provided in below and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or Subtenant with respect to this Sublease, the Property, the Subleased Space or the Energy System and from and against any action or proceeding brought thereon; and in case of any action or proceeding brought against Sublandlord, shall defend the same at Subtenant's expense by legal counsel reasonably approved in writing by Sublandlord. provided, however, that Subtenant shall not be liable for any Claims to the extent arising from damage or injury ultimately determined by a court of competent jurisdiction to be occasioned by the negligence of Sublandlord, any Sublandlord Party, or Sublandlord's guests, invitees, other lessees, licensees or permittees, unless the same is covered by insurance Subtenant is required to provide under this Sublease. The foregoing obligation of Subtenant to indemnify shall include all costs of legal counsel and investigation, together with other costs, expenses and liabilities incurred in connection with any and all claims of damage. Notwithstanding the foregoing, in no event shall either Party be responsible or liable for indirect, consequential, special or punitive damages, and each Party hereby waives the same.

22. Indemnification Procedures. All Indemnified Claims shall be asserted and resolved as set forth in this Section 22.

22.1 Indemnified Claims. Any Claims for which Subtenant ("**Indemnifying Party**") is obligated to indemnify the Sublandlord Parties pursuant to this Sublease shall be collectively referred to herein as the "**Indemnified Claims.**"

22.2 Notice of Indemnified Claim. In the event that any Indemnified Claim is asserted against or sought to be collected from any Sublandlord Party ("**Indemnified Party**") by a third party, such Indemnified Party shall promptly, but in no event later than fifteen (15) calendar days following such Indemnified Party's receipt of notice of such Indemnified Claim, deliver written notice to the Indemnifying Party, describing in reasonable detail the nature of such Indemnified Claim and itemizing the amount or the estimated amount of such Indemnified Claim, to the extent then feasible, provided that any estimate shall not be conclusive of the final amount of such Indemnified Claim (an "**Indemnified Claim Notice**"); provided, however, that the failure of a Sublandlord Party to deliver an Indemnified Claim Notice within such fifteen (15) day period shall not impair, reduce, relieve or waive the Indemnifying Party's indemnification obligations under this Sublease, except to the extent that the failure materially prejudices the rights or obligations of the indemnified Party.

22.3 Payment of Indemnified Claim. The Indemnifying Party shall pay to the applicable indemnified Party any Indemnified Claim or deliver to such indemnified Party a written notice objecting to such Indemnified Claim (an "**Indemnified Claim Objection Notice**") within ten (10) days after delivery of an Indemnified Claim Notice. If the Indemnifying Party fails to deliver to such indemnified Party an Indemnified Claim Objection Notice within said ten (10) day period, the Indemnifying Party shall be conclusively deemed to have waived any objection to the Indemnified Claim. If the Indemnifying Party delivers an Indemnified Claim Objection Notice with said ten (10) day period, then the Parties shall negotiate in good faith for thirty (30) calendar days to resolve such objection, after which any such objection that cannot be resolved by the Parties shall be determined by a court or arbitrator of competent jurisdiction. If the court or arbitrator of competent jurisdiction determines that the Indemnifying Party must pay to such Indemnified Party any amounts in respect of the Indemnified Claim, then the indemnifying Party shall pay such amounts within ten (10) days after the court or arbitrator of competent jurisdiction makes such determination. In addition to any other remedy available for the failure of the indemnifying Party to pay such Indemnified Claims in accordance with this Sublease, such Indemnified Claims, if not paid when due, shall bear interest at a rate equal to ten percent (10%) per annum.

22.4 Defense of Action. If any Action is asserted against an indemnified Party that arises from any Indemnified Claim, then such Indemnified Party shall deliver written notice of such Action to the Indemnifying Party, provided that the failure to deliver such written notice shall not impair, reduce, relieve or waive the indemnifying Party's indemnification obligations under this Sublease, except to the extent that the failure materially prejudices the rights or obligations of the Indemnifying Party. The Indemnifying Party shall promptly assume such indemnified Party's defense with respect to such Action, including but not limited to the employment of counsel acceptable to such indemnified Party and the negotiation of any settlement, and such Indemnified Party shall provide the Indemnifying Party with such

information relating to the Indemnified Claim as the indemnifying Party shall reasonably request. The Indemnified Party shall have the right (but not the obligation) to undertake its own defense, employ separate counsel and participate in any settlement negotiation. All costs and expenses incurred in defending such Indemnified Claim shall be borne by the Indemnifying Party.

22.5 Settlement of Indemnified Claim. The Indemnifying Party shall not, without the prior written consent of the applicable Indemnified Party, enter into any settlement of any Indemnified Claim that (i) admits liability or accepts culpability for such Indemnified Claim, (ii) imposes any consent order, injunction or decree that would restrict the future activity or conduct of such indemnified Party and/or its directors, shareholders, officers, employees, affiliates, agents and/ representatives, (iii) does not include the delivery to such indemnified Party of a full and complete written release of such Indemnified Party from such Indemnified Claim and a dismissal with prejudice of Action asserted in connection with such Indemnified Claim, and/or (iv) may obligate such Indemnified Party to pay any sum or perform any other future obligation, as determined by such Indemnified Party in its sole discretion.

22.6 Insurance.

22.6.1 Certificates of Insurance. On or before the Effective Date, and thereafter during its Term, Subtenant shall provide Sublandlord with current certificates of insurance, as evidence of all insurance policies required under this Section 20.0. All insurance certificates shall (a) state that such insurance coverage may not be modified, canceled or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Sublandlord, (b) name Sublandlord, as well as the City of San Diego, as an additional insured, (c) contain a waiver of subrogation in favor of Sublandlord, and (d) state that such insurance coverage is primary for all purposes. All required insurance policies shall be issued by companies having an A.M. Best rating of "A-" or better.

22.7 Insurance Requirements.

22.7.1 Construction Period Coverage. During the period of any construction of Subtenant's Work, Subtenant agrees to obtain or require its general contractor to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage.

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

22.7.3 Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State of California, Sublandlord and Subtenant shall maintain

in force workers compensation insurance for all of its employees. Sublandlord and Subtenant shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 (One Million Dollars) per accident and per employee for disease. In lieu of such insurance, Sublandlord and Subtenant may maintain a Worker's Compensation self-insurance program meeting the requirements of the State of California.

22.8 Self-Insurance. So long as Subtenant or any entity that controlling, controlled by or under common control with Subtenant (a "**Subtenant Affiliate**") is the "Subtenant" under this Sublease, Subtenant or such Subtenant Affiliate may elect to assume, insure or maintain a plan of self-insurance for all or any part of the applicable insurance required of the "Subtenant" under this Sublease. Subtenant shall provide evidence thereof and Sublandlord may assess annual and quarterly reports at Edgaronline.com Sempra.com. In the event that any entity other than Subtenant shall become the "Subtenant" under this Sublease (a "**Successor Subtenant**"), and notwithstanding anything to the contrary in this Section 22, such Successor Subtenant may elect to assume, insure or maintain a plan of self-insurance for all or any part of the insurance required of the "Subtenant" under this Sublease if (i) such Successor Subtenant has and continues to have a net worth equal to or greater than Fifty Million Dollars (\$50,000,000), and (ii) such Successor Subtenant delivers to Sublandlord (a) upon such Successor Subtenant's election a certificate that such Successor Subtenant has the required net worth, (b) its self-insurance plan and (c) a certificate stating that such Successor Subtenant is the insurer for all purposes under this Sublease for the particular risk. Such entity shall also deliver to Sublandlord on or before January 1 of each calendar year a certificate signed by an officer of Subtenant certifying that Subtenant has as of such date a net worth of Fifty Million Dollars (\$50,000,000). If such Successor Subtenant is a corporation, the stock of which is traded on a national securities exchange, the obligation to certify its net worth pursuant to this Section 22.8 will be deemed satisfied by the submission of the most current annual and any subsequent quarterly reports prepared for such Successor Subtenant's shareholders. If Subtenant assumes, insures or maintains any such plan of self-insurance, no such self-insurance shall diminish the rights and privileges to which Sublandlord is otherwise entitled under the terms of this Sublease when there is a third-party insurer. If Subtenant, a Subtenant Affiliate or a Successor Subtenant ceases to maintain a plan of self-insurance with respect to any risk for which this Sublease requires insurance or, with respect to a Successor Subtenant, if such Successor Subtenant fails to continue to meet the net worth requirements set forth above, Subtenant, such Subtenant Affiliate or such Successor Subtenant, as applicable, shall give notice thereof to Sublandlord and shall immediately comply with the provisions of this Sublease relating to the policies of insurance required. In addition, if Subtenant, a Subtenant Affiliate or a Successor Subtenant elects to self-insure, then Subtenant, such Subtenant Affiliate or such Successor Subtenant, as applicable, in its capacity as insurer, shall be treated in the same manner as an independent third party insurer would be treated.

22.9 Condemnation; Casualty; Closing.

22.9.1 Closing of Science Center. Sublandlord shall deliver ninety (90) calendar days prior written notice to Subtenant of any closing or abandonment of the Property for an indefinite period, and Subtenant shall have the option, exercisable by delivery of written notice to Sublandlord within thirty (30) calendar days after receipt of Sublandlord's notice, to terminate this Sublease.

22.9.2 Condemnation. Sublandlord shall deliver written notice of any condemnation action filed by any governmental authority. If Subtenant determines, in Subtenant's sole discretion, that such condemnation shall render most of the Subleased Space uninhabitable or unusable, then Subtenant shall have the option, exercisable upon delivery of written notice to Sublandlord within ninety (90) calendar days after receipt of Sublandlord's notice, to terminate this Sublease and remove the Energy System, and in such event, Subtenant shall not be required to adhere to the conditions in Section 2.5 of the ESA..

22.9.3 Casualty.

(a) Damage to the Property or the Science Center. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Property or the Science Center or a partial destruction, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of the Science Center, by any cause whatsoever, whether or not insured against and whether or not the Subleased Space is partially or totally destroyed, Sublandlord may, within a period of one hundred eighty (180) calendar days after the occurrence of such destruction, notify Subtenant in writing that it elects not to so reconstruct or restore the Science Center, in which event this Sublease shall cease and terminate as of the date thirty (30) calendar days following the date Sublandlord provides such notice of termination to Subtenant.

(b) Reconstruction. In the event that the Subleased Space is partially or totally destroyed as a result of any casualty or peril, Sublandlord may within a period of one hundred eighty (180) days after the occurrence of such destruction (i) commence reconstruction and restoration of the Subleased Space prosecute the same diligently to completion, in which event this Sublease shall continue in full force and effect; or (ii) notify Subtenant in writing that it elects not to so reconstruct or restore the Subleased Space, in which event this Sublease shall cease and terminate as of the date of service of such notice, unless Subtenant is unable to continue the operation of its business after the occurrence of such destruction, in which event this Sublease shall cease and terminate as of the date of such destruction.

23. Default

23.1 Sublandlord Default. If Sublandlord breaches any term or condition of this Sublease and fails to cure such breach within thirty (30) calendar days after delivery of written notice to Sublandlord by Subtenant ("**Sublandlord Default**"), then Subtenant may immediately, without the requirement of any further notice to Sublandlord, terminate this Sublease and exercise any other right or remedy available to Subtenant at law or in equity.

23.2 Subtenant Default. If Subtenant breaches any term or condition of this Sublease and fails to cure such breach within thirty (30) calendar days after delivery of written notice to Subtenant by Sublandlord ("**Subtenant Default**"), then Sublandlord may immediately, without the requirement of any further notice to Subtenant, terminate this Sublease and exercise any other right or remedy available to Sublandlord at law or in equity.

24. Miscellaneous Provisions.

24.1 Entire Agreement; Amendment. This Sublease constitutes the entire

understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof, except the ESA. This Sublease may not be modified, amended or changed in any way except in a written instrument executed by both Parties.

24.2 Construction of Agreement. The section headings contained in this Sublease shall not be considered a part hereof for purposes of interpreting or applying this Sublease, but are for convenience only. Any capitalized terms in this Sublease that are used without definition in this Sublease shall have the definitions set forth in the ESA.

24.3 Governing Law; Dispute Resolution. This Sublease shall be governed by and construed in accordance with the laws of the State of California. All disputes under this Sublease shall be resolved in accordance with the dispute resolution provision set forth in Section 13 of the ESA.

24.4 Binding on Successors. This Sublease shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and permitted assigns.

24.5 Attorneys' Fees. If either Party files any action or brings any proceeding against the other arising from or related to this Sublease, then the prevailing Party shall be entitled to recover from the other Party as an element of its costs of suit and not as damages, reasonable attorneys' fees, reasonable costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing Party" within the meaning of this Section 24.5 shall mean the Party to the action or proceeding who is entitled to recover its costs of suit for the proceeding, whether or not the same proceeds to final judgment. A Party not entitled to recover its costs shall not recover attorneys' fees.

24.6 Notices. All notices to be given under this Sublease shall be in writing and either (a) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or (b) by telecopy or similar means, if a copy of the notice is also sent by United States mail, in which case notice shall be deemed delivered upon transmittal by telecopier or other similar means if delivered during Business Hours, provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

If to Subtenant:

San Diego Gas & Electric Company
8335 Century Park Court, CP12G
San Diego, California 92123-1569
Attn.: Paul Stapleton, Sustainable Technologies Business Manager
Telephone Number: 858-654-1886
Facsimile Number: 858-636-5724

If to Sublandlord:

Reuben H. Fleet Science Center

P.O. Box 33303
San Diego, CA 92163-3303
Attn.: Craig Blower, Chief Operating Officer
Telephone Number: (619) 238-1233 ext. 701
Facsimile Number: (619) 685-5777

Either Party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other Party in the manner provided for giving notice.

24.7 Counterparts. This Sublease may be executed in counterparts, each of which shall be deemed an original.

24.8 Authorized Representatives. Each person executing this Sublease on a Party's behalf represents and warrants he or she has been duly authorized to execute the same on such Party's behalf.

24.9 Memorandum of Sublease. Promptly after execution of this Sublease, the Parties shall cause a Memorandum of Sublease in the form attached as Exhibit G to be recorded by Subtenant in the official records of San Diego County

24.10 Assignment; Subleasing. Subtenant may not assign Subtenant's rights or obligations under this Sublease or sublease the Subleased Space to any other person or entity without Sublandlord's prior written consent, which shall not be unreasonably withheld; provided, however, that Sublandlord's prior written consent shall not be required for any assignment of Subtenant's rights and obligations under this Sublease to any entity controlling, controlled by or under common control with Subtenant so long as Subtenant delivers written notice of such assignment to Sublandlord within thirty (30) calendar days after such assignment. It shall not be unreasonable for Sublandlord to withhold consent based upon Sublandlord's sole determination of inadequate financial or technical resources and capacity of a proposed assignee or the assignee having less than 5 years' experience operating facilities similar to those contemplated by the ESA and this Sublease. No sublease or assignment shall be effective without the prior written consent of the City of San Diego under the terms of the Underlying Lease.

24.11 Severability. In the event that any of the terms or conditions of this Sublease shall be held invalid as to any Party or circumstance by any court having competent jurisdiction over such matters, all other terms and conditions of this Sublease and their application shall not be affected thereby but shall remain in full force and effect unless such court holds that the provisions are not severable from all other provisions of this Sublease.

24.12 Waiver of Rights. No waiver or any term or condition of this Sublease shall be effective unless made in writing and signed by the Party against whom the waiver is sought to be enforced. Any waiver at any time by any Party of its rights under this Sublease or any default under this Sublease shall not be deemed a waiver as to any other right or subsequent default.

24.13 Consent of City of San Diego. Notwithstanding anything to the contrary

set forth herein, this Sublease shall not be effective unless and until the City of San Diego shall have executed the Consent of the City of San Diego attached hereto as Exhibit I.

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

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

24.16 Force Majeure. If either Landlord or Tenant shall be prevented or delayed from punctually performing any obligations or satisfying any condition under this Sublease by any strike, lockout, labor dispute, unavailability of services, labor or materials or reasonable substitutes therefor, acts of God, unusually inclement weather, unusual governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, terrorist acts, fire or other casualty, any condition caused by the other party, or other non-financial causes beyond the reasonable control of the party obligated to perform then the time to perform such obligation or to satisfy such condition shall be extended on a day-for-day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this paragraph shall, as a condition to claiming such benefit, give notice to the other party in writing within fourteen (14) days of the incident specifying the nature of the incident with particularity, including the date the incident occurred and a reasonable estimate of the period that the incident will delay the fulfillment of the obligations contained in this Sublease. This paragraph shall not apply to the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have read this Sublease, understand it and agree to be bound by its terms as of the date first set forth above.

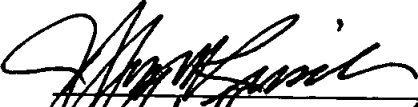
SUBLANDLORD:

SAN DIEGO SPACE & SCIENCE
FOUNDATION,
a California non-profit organization

By:

Name:

Title:


Jeffrey W. Kirsch
Executive Director

SUBTENANT

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By:

Name:

Title:

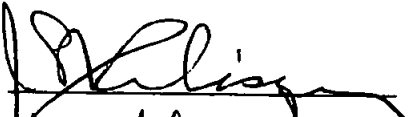

Joe Velasquez
Dr. Comm3 Ind Services

EXHIBIT A

DESCRIPTION OF PROPERTY

The Reuben H. Fleet Science Center is located at 1875 El Prado, at the South terminus of the Prado in Balboa Park at the property identified by assessor's parcel number 534-450-08, as depicted below:

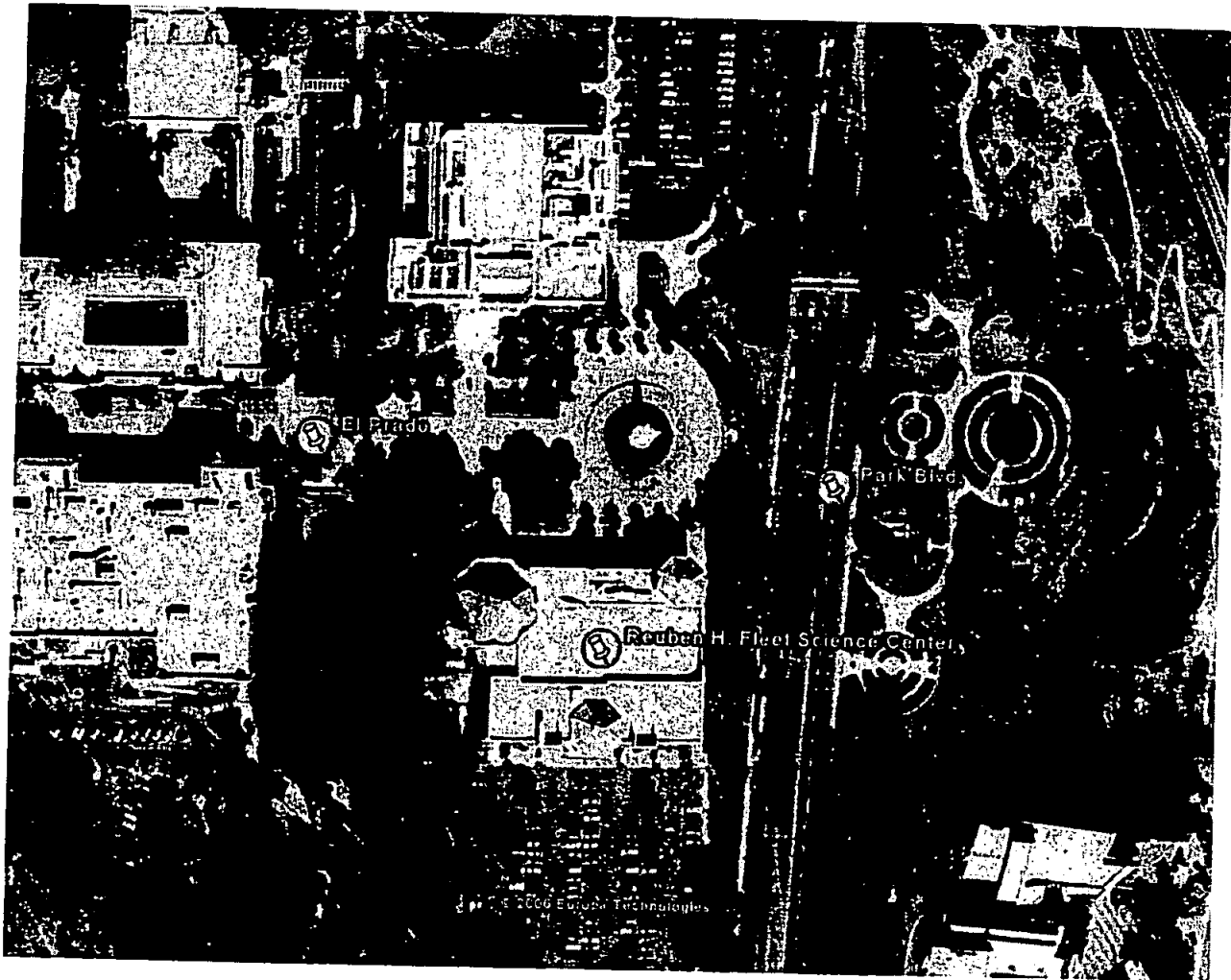
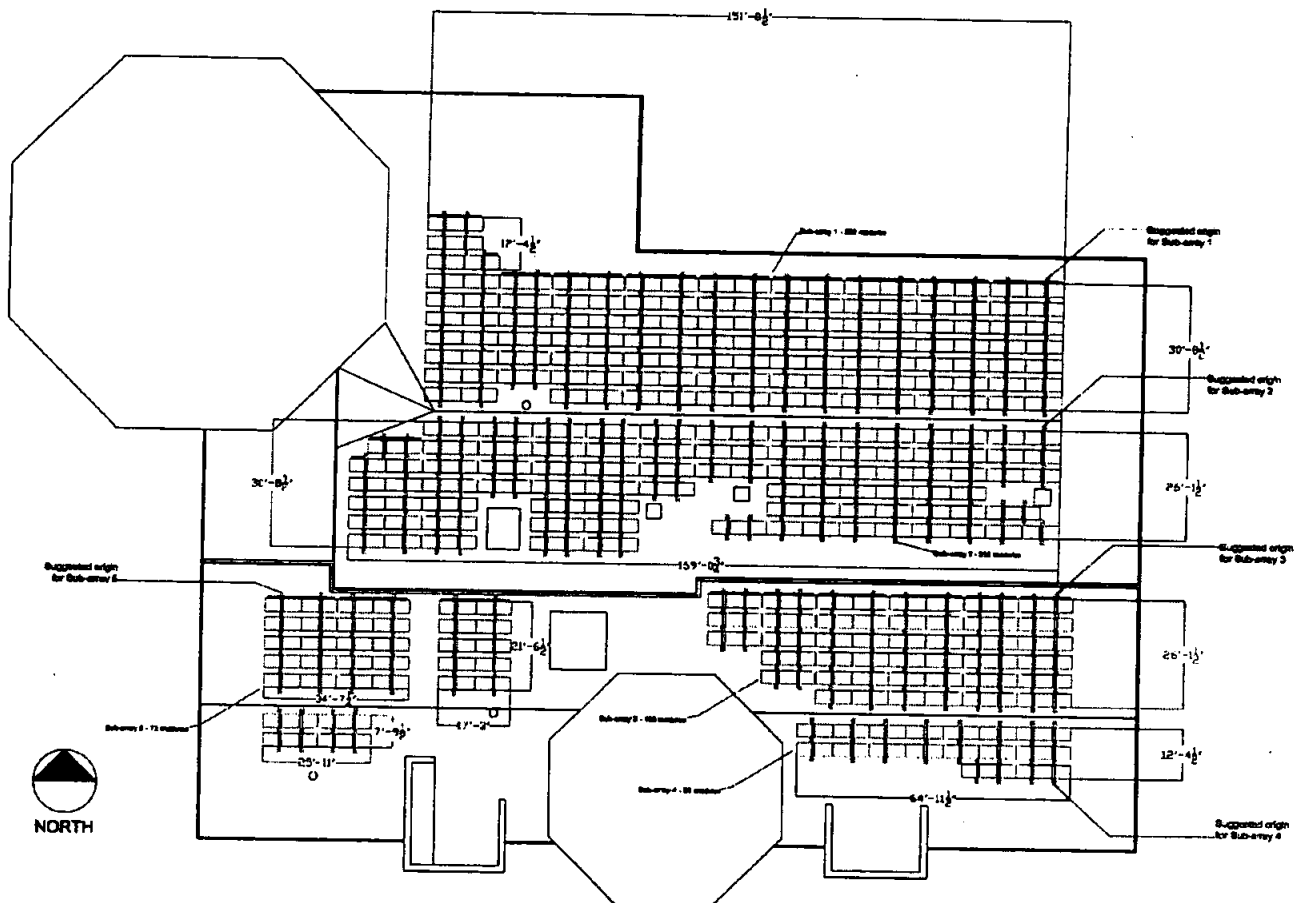


EXHIBIT B

DESCRIPTION OF SUBLEASED SPACE

Subleased Space Site 1: Approximately 12,500 square feet of space located on the roof of the Science Center located on the Property as depicted below.



Subleased Space Site 2: Approximately 50 square feet of Property located on the ground adjacent to the existing electrical service connections for the Science Center on the Property as depicted below.

EXHIBIT C

EQUIPMENT ON SITE 1

List of equipment:

1. Photovoltaic Panels
2. Combiner Box(es)
3. Wiring and conduit
4. Disconnect switch(es)
5. Communications equipment box(es)
6. Data acquisition system

EXHIBIT D
EQUIPMENT ON SITE 2

List of equipment:

1. AC to DC Inverter(s)
2. Isolation transformer
3. Wiring and conduit
4. Transformer(s)
5. Meters
6. Breaker panel(s)
7. Disconnect switches
8. 120 volt power box(es)
9. Communications equipment box(es)
10. Data acquisition system

EXHIBIT E
ENERGY SERVICES AGREEMENT

[Attached]

EXHIBIT F

Form of SUBLANDLORD'S CONSENT TO COLLATERAL ASSIGNMENT

Borrower:

Lender:

THIS SUBLANDLORD'S CONSENT TO ASSIGNMENT is entered into among _____ ("Borrower"), whose address is _____; and _____ ("Sublandlord"), whose address is _____. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Sublandlord hereby agrees with Lender and Borrower as follows.

COLLATERAL DESCRIPTION. The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

BORROWER'S ASSIGNMENT OF LEASE. Borrower hereby assigns to Lender all of Borrower's rights in the Sublease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all Borrower's rights under the Sublease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Sublease while not in default on the Loan or Sublease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Sublease or the Loan, until the Loan is paid in full. No Amendments may be made to the Sublease without Lender's prior written consent which shall not be unreasonably withheld or delayed.

CONSENT OF SUBLANDLORD. Sublandlord consents to the above assignment. If Borrower defaults under the Loan or the Sublease, Lender may reassign the Sublease, and Sublandlord agrees that Sublandlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Sublease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Sublease. While Lender is in possession of the Premises, Lender will cause all payments due under the Sublease and attributable to that period of time to be made to Sublandlord. If Lender later reassigns the Sublease or vacates the Premises, Lender will have no further obligation to Sublandlord.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Sublease. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Sublease shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Sublandlord's Consent to Assignment, as this Sublandlord's Consent to Assignment may be amended or modified from time to time, together with all exhibits and schedules attached to this Sublandlord's Consent to Assignment from time to time.

Borrower. The word "Borrower" means _____ and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Sublease.

Sublandlord. The word "Sublandlord" means San Diego Space and Science Foundation, and is used for convenience purposes only. Sublandlord's interest in the Premises may be that of a fee owner, Lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

Sublease. The word "Sublease" means that certain lease of the Subleased Space, dated _____, between Sublandlord and Borrower.

Lender. The word "Lender" means _____, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

Premises. The word "Premises" means the real property.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in

connection with the Loan.

BORROWER AND SUBLANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISION OF THIS SUBLANDLORD'S
CONSENT TO ASSIGNMENT, AND BORROWER AND SUBLANDLORD AGREE TO ITS TERMS. THIS SUBLEASE IS DATED.

BORROWER:

By: _____

SUBLANDLORD:

LENDER:

By: _____

X _____

EXHIBIT G

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE (this "Memorandum") is made this ____ day of ____, 2006 by and between SAN DIEGO SPACE AND SCIENCE FOUNDATION, doing business as the Reuben H. Fleet Science Center, a California non-profit organization company ("**Sublandlord**"), and SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("**Subtenant**").

RECITALS

A. On ____, 2006, Sublandlord and Subtenant entered into a written Facility Sublease Agreement ("Sublease") for certain Premises situated in the City of San Diego, County of San Diego, State of California, as more particularly set forth in the Sublease and described in the attached Exhibit A ("**Subleased Space**").; and

B. The parties desire to place their interests in the Sublease as a matter of record.

NOW, THEREFORE, the parties represent as follows:

1. This Memorandum is prepared for the purpose of recordation and in no way modifies the terms and conditions of the Sublease. If there is any inconsistency between the terms and conditions of the Memorandum and the terms and conditions of the Sublease, the terms and conditions of the Sublease shall control.

2. Option Term. The Initial Term of the Sublease commenced on ____, 200_ and expires as of ____, 200_ ; provided that Subtenant may extend the Initial Term of the Sublease up to two (2) times, in each case for an additional period of five (5) years.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Option to be duly executed on the day and year first above written.

"**SUBLANDLORD**":

SAN DIEGO SPACE & SCIENCE FOUNDATION,
a California non-profit organization

By: _____
Name: _____
Title: _____

"**SUBTENANT**":

SAN DIEGO GAS & ELECTRIC
COMPANY, a California corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENTS

STATE OF _____ §
COUNTY OF _____ §

On _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ of _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC, STATE OF CALIFORNIA

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

On _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ of _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC, STATE OF CALIFORNIA

My Commission Expires:

EXHIBIT H

**Underlying Lease
[Attached]**

EXHIBIT I

**Consent to Sublease by the City of San Diego
[Attached]**

Exhibit "E"

ENERGY SERVICES AGREEMENT

This Energy Services Agreement ("**Agreement**") is made and entered into as of the 25th day of September, 2006 ("**Effective Date**"), by and between the San Diego Space and Science Foundation doing business as The Reuben H. Fleet Science Center, a California non-profit organization (the "**Customer**"), and San Diego Gas & Electric Company, a California corporation ("**SDG&E**"). Customer and SDG&E are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

- A. WHEREAS, Customer, as tenant, and the City of San Diego (the "**City**"), as landlord, are parties to a lease agreement (the "**Underlying Lease**") and operates the building and improvements located thereon, commonly known as The Reuben H. Fleet Science Center and located at 1875 El Prado, San Diego, CA, 92101 (collectively, the, "**Property**");
- B. WHEREAS, SDG&E will install at the Property and operate an electric generation system for its electric distribution system, as described in more detail in the attached Exhibit "A" – entitled "*Energy System Description*," attached hereto and incorporated herein by this reference ("**Energy System**"). The Energy System will provide electric power to SDG&E's electric distribution system;
- C. WHEREAS, SDG&E will be able to verify the conditions under which the Energy System can be installed and operated on an economical basis for future electric distribution projects; and
- D. WHEREAS, after the installation of the Energy System, SDG&E will provide electric service to the occupants of the Property at the applicable utility tariff(s) rate in accordance with the terms hereof.
- E. NOW, THEREFORE, the Parties, for and upon the promises, covenants, conditions, terms and provisions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

SECTION 1 - SCOPE OF SERVICES

1.1 Electric Service. SDG&E will provide electric service to the occupants of the Property according to the Tariff Rules (the "**Rules**") approved by the California Public Utilities Commission ("**CPUC**"). The Energy System will operate in parallel with SDG&E's electric distribution system and occupants of the Property will be billed according to the applicable SDG&E schedule(s). No special provisions will be provided by SDG&E unless otherwise agreed upon by both Parties in writing and approved in writing by the CPUC.

1.2 Billing. Bills for electric service will be rendered according to the Rules approved by the CPUC.

1.3 Sub-Lease. SDG&E shall install and operate the Energy System within two (2) sites at the Property ("**Site 1**" and "**Site 2**") that SDG&E shall sublease from Customer on the terms and conditions set forth in the Facilities Sublease Agreement, dated as of even date herewith ("**FSA**"), by and between the Customer as Sublandlord and SDG&E as Subtenant. SDG&E shall not be responsible for additional rents, taxes or fees unless such obligation is expressly set forth in the FSA.

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

SECTION 2 – PHASES AND TERMINATION OF AGREEMENT

2.1 Design Phase. Upon the complete execution of this Agreement, the Design Phase will begin, and SDG&E will commence the steps necessary for the design of its Energy System.

2.1.1 Notice to Customer. SDG&E will notify the Customer in writing when the design has been completed (“**Design Completion Notice**”). SDG&E’s written notification shall include notice to Customer of where any concrete slabs or structures are planned to be located and all such drawings and engineering information that are reasonably necessary for Customer to make a determination as to the impacts of proposed concrete slabs, structures or equipment on the Science Center.

2.1.2 Notice of Design Acceptance. Upon receipt of the Design Completion Notice and a copy of the set of plans, Customer will have fifteen (15) business days to review the plans and provide written input to SDG&E. SDG&E shall specify the proposed location and number of square feet of Site 1 and Site 2. Customer will provide to SDG&E a written notification (“**Notice of Design Acceptance**”) upon approving the location of Site 1 and Site 2, as well as the Energy System design and equipment to be installed, within Site 1 and Site 2, at which time the definition of Site 1 and Site 2 shall be inserted into Exhibits B, C and D of the FSA.

2.1.3 Right to Terminate. Either party may terminate the Agreement at any time during the Design Phase for any reason or no reason upon ten (10) calendar days prior written notice.

2.2 Installation Phase. Upon SDG&E’s receipt of the Notice of Design Acceptance, SDG&E will commence the actions necessary to complete the Energy System’s installation. SDG&E shall coordinate the installation with the Customer’s operations schedule and complete the installation within one-hundred and eighty (180) calendar days from the start of construction.

2.2.1 Right to Terminate. Either party may terminate the Agreement at any time during the Installation Phase for any reason or no reason upon ten (10) calendar days prior written notice.

- a) If a breach or event of default by Customer occurs during the Installation Phase, or Customer requests to terminate this Agreement for any reason other than a breach by SDG&E during the installation phase, SDG&E shall be entitled to terminate the Agreement and charge Customer a termination fee pursuant to Section 2.4.
- b) If a breach or event of default by SDG&E occurs during the Installation Phase, or SDG&E requests to terminate this Agreement for any reason other than a breach by Customer, SDG&E shall compensate Customer for any and all reasonable documented amounts expended by Customer in support of the installation of the Energy System as of the date of termination and reasonable removal costs. SDG&E shall provide electric and natural gas service to the Property under existing rules, conditions and tariffs.

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

2.3 Generation Phase

2.3.1 Generation Phase Term. Upon Customer's receipt of Commissioning Completion Notice, the Generation Phase Term shall be in effect for a term of ten (10) years commencing on the effective date of the Completion Notice.

2.3.2 Customer's Options at End of Generation Phase Term. Upon the expiration of the Agreement's initial ten (10) year Generation Phase, the following provisions shall apply:

- a) Customer shall have the option ("**First Extension Option**") to continue the Generation Phase for an additional five (5) year term ("**First Extended Term**"), subject to all the terms and conditions set forth in this Agreement, exercisable by delivery of written notice to SDG&E not less than ninety (90) calendar days prior to the scheduled expiration of the Generation Phase Term. Upon Customer's exercise of the First Extension Option and expiration of the First Extended Term, Customer shall have another option ("**Second Extension Option**") to continue the Generation Phase upon expiration of the First Extended Term for a second five (5) year term ("**Second Extended Term**"), subject to all terms and conditions of this Agreement, exercisable by delivery of written notice to SDG&E not less than ninety (90) calendar days prior to the scheduled expiration of the First Extended Term.
- b) Customer shall have the option to purchase the Energy System for a negotiated price exercisable by delivery of written notice to SDG&E not less than sixty (60) calendar days prior to the scheduled expiration of the Generation Phase Term (as the same may be extended). The Parties shall negotiate in good faith regarding the purchase price of the Energy System for thirty (30) calendar days after the delivery of Customer's written notice electing to purchase the Energy System ("**Negotiation Period**"). Customer will be responsible for the redesign and reconfiguration of the Energy System to provide power to the Property on Customer's side of the utility electric service meter. Customer will be responsible for all costs including but not limited to: net metering, interconnection, local permitting costs (if necessary). Both Parties will sign an agreement that will include all terms and conditions of the sale ("**Transfer of Ownership Agreement**").
- c) If Customer does not elect to purchase the Energy System as set forth in subparagraph (b) above, then SDG&E will remove the Energy System pursuant to the requirements of Section 2.5 below.

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

2.3.4 Default by SDG&E. If SDG&E fails to perform any material provision of the Agreement within thirty (30) calendar days from receipt of written notice from Customer to cure, Customer may immediately upon notice to SDG&E elect to terminate the Generation Phase and have SDG&E remove the Energy System in accordance with Section 2.5, below and the provisions of the FSA.

2.4 Termination Fee. Upon termination of the Agreement by Customer for any reason other than a breach or event of default by SDG&E, Customer shall;

2.4.1. At SDG&E's discretion, be required to reimburse SDG&E for reasonable documented expenses incurred to remove the Energy System; and

2.4.2. At SDG&E's discretion, be required to reimburse SDG&E for reasonable original installation costs.

Customer shall pay the Termination Fee within one hundred eighty (180) calendar days of receipt of any invoice from SDG&E and reasonable supporting documentation. Provided, however, that no Termination Fee shall be due (a) if SDG&E terminates the Agreement, (b) if Customer terminates the Agreement or the FSA due to a breach or event of default by SDG&E, (c) upon the scheduled expiration of the Generation Phase Term (as the same may be extended) or, (d) if the Agreement and the FSA are terminated due to the termination of the Underlying Lease for any reason other than the voluntary relinquishment, termination or surrender of the Underlying Lease or vacation or abandonment of the Property by Sublandlord.

2.5 Removal of Energy System. If the Agreement is terminated (or if Customer elects to have SDG&E remove the Energy System upon expiration of the Generation Phase), SDG&E will remove the Energy System from the Property and ensure proper electrical service is provided. Customer agrees that SDG&E will not be required to, and understands that SDG&E will not remove any concrete pads or other such permanent facilities installed to accommodate the Energy System. SDG&E will exercise reasonable care in the removal as required in accordance with the FSA. SDG&E will remove the Energy System within one hundred and twenty (120) calendar days of termination of this Agreement. If SDG&E does not remove the Energy System within the specified time frame, Customer may have the System removed at SDG&E's cost and expense.

SECTION 3 – SDG&E'S STATUS AND SUBCONTRACTORS

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

3.2 Subcontracts and Subcontractors. SDG&E will have the right to have all or any part of the design, installation, operation, maintenance, or removal of the Energy System or any other obligation of SDG&E undertaken concerning the Agreement, accomplished by subcontractors pursuant to subcontracts between SDG&E and such subcontractors. Subcontractors will be selected by SDG&E, and SDG&E will be solely responsible for the performance of the subcontractors. SDG&E will pay each subcontractor according to the terms of the subcontract between SDG&E and the respective subcontractor; provided, however, that SDG&E's obligations under this ESA and the FSA shall remain at all times the obligations of SDG&E notwithstanding the use of subcontractors. SDG&E will provide Customer with notices of the identities of all such subcontractors and provide such subcontractors with identification that is reasonably required by Customer for use while on the Property.

3.3 No Liens. SDG&E will keep the Property free from all liens from contractors or subcontractors performing work for SDG&E, provided, however, that SDG&E may dispute any such lien so long as SDG&E posts a bond against such lien in accordance with applicable law.

SECTION 4 - OWNERSHIP

4.1 Ownership of Energy System. SDG&E will at all times during the term of this Agreement have sole ownership of all and each part of the Energy System. Customer agrees that the

Energy System is the personal property of SDG&E and shall execute or obtain the execution of such documents SDG&E reasonably requires in order to document its ownership interest and protect it from the claims of creditors of Customer.

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

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

SECTION 5 – CUSTOMER’S RIGHTS AND DUTIES

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

5.2 Access / Space. Customer shall provide SDG&E with space for and access to the Energy System in accordance with the FSA.

5.3 Equipment Enclosure. Customer shall allow SDG&E, at SDG&E’s sole expense, to provide and erect a secured equipment enclosure for the ground mounted equipment.

5.4 Structural Engineering and Roof Design.

5.4.1 Design Provisions. Upon advance written request of SDG&E, Customer shall provide SDG&E with access to the Property for determination of shading, orientation, and slope of roof by SDG&E. SDG&E shall, at its own expense, provide structural verification by a registered engineer to Customer that the roof on which the PV panels will be sited is adequate for that purpose. Customer agrees to: make no photocopies or other copies of the Energy System plans; disclose them to no one except for its engineers, accountants, attorneys and other agents who have a need to know and the Building Owner, including the City; and that the plans will be used for no other purpose than this Agreement and construction permitting.

5.4.2 Roof Compatibility. With the reasonable assistance of SDG&E, Customer shall be responsible for ensuring the PV System and materials and placement of SDG&E’s Energy System on the roof will not void the roof warranty. During the installation of the Energy System, SDG&E will make reasonable adjustments to its installation of the Energy System, as reasonably requested by the Customer to maintain the roof warranty. If, in order to ensure that the placement of the Energy System on the roof will not void the roof warranty, Customer retains a roofing contractor or other roofing consultant, contractor or expert (a “Roofing Consultant”) to assess the installation of the Energy System, make recommendations regarding the installation of the Energy System in relation to the roof warranty or advise Customer regarding the roof warranty, then SDG&E shall pay the reasonable out-of-pocket costs incurred by Customer to retain such Roofing Contractor. After installation of the Energy System, SDG&E shall not take any action that will void Customer’s roof warranty after the Effective Date.

5.4.3 Maintenance Provisions. Customer shall allow SDG&E to install a water spigot located on the roof for buildings on which the PV panels will be sited. Such installation shall not be visible from the exterior of the building and shall comply with any screening or positioning requirements of the City, pursuant to the Underlying Lease.

5.5 Data and Tours. Customer shall provide permission to SDG&E, its affiliates and their respective employees, contractors and agents to inspect, monitor, photograph and videotape the Energy System; conduct surveys; utilize all data for evaluation, business planning, and marketing purposes; arrange tours by interested 3rd parties, all in accordance with the terms and conditions of the FSA. SDG&E shall obtain written permission from Customer prior to conducting tours. SDG&E will provide tours to Customer, its affiliates and their respective employees, contractors and agents to view, photograph and videotape the Energy System upon Customer's reasonable written request. Tours (for Customer and for third parties) shall be scheduled and conducted in a manner that is not disruptive to Customer's business operations.

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

5.7 Permits. SDG&E shall be responsible for obtaining all permits for the installation, operation and removal of the Energy System.

5.8 LEED™ Certification and Energy Efficiency. Customer has submitted a LEED-EB™ application to the US Green Building Council for Certification for the Property. Customer shall make reasonable efforts to obtain Certification within two (2) years after the Effective Date. Customer shall make reasonable efforts to retrofit energy savings measures to achieve annual energy savings equivalent to 150,000 kWh/year within five (5) years after the Effective Date. The reduction in energy consumption shall be calculated using EnergyPro Version 3.1.

5.9 Customer's General Responsibilities. Except as may be expressly provided herein, Customer will not move, modify, remove, adjust, alter, change or operate the Energy System, or any part of it, during the term of the Agreement, without prior written direction or approval of SDG&E, except if there is an occurrence reasonably deemed by the Customer to be a bona fide emergency of which the Customer will notify SDG&E immediately. Customer shall maintain the Property in good repair and will use its reasonable efforts to protect and preserve the Energy System.

SECTION 6 – SDG&E'S RIGHTS AND DUTIES

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

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

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

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

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

6.6 Communications. SDG&E shall at its sole expense provide for a separate communications service for the Energy System.

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

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

6.9 SDG&E's Maintenance Responsibilities. During the Generation Phase, at no cost to Customer, SDG&E will operate the Energy System and keep it in good condition and repair. However, should the need for maintenance or repairs arise solely from the negligence or misconduct of the Customer or any employee or other agent of the Customer, SDG&E may, at its election, perform maintenance, repairs and make adjustments to the Energy System and may charge the Customer for this work. SDG&E will invoice the Customer for such charges and the Customer will pay SDG&E's invoice within one hundred eighty (180) calendar days of receipt, unless Customer disputes the allegations of negligence or misconduct, in which case the Parties shall negotiate in good faith for thirty (30) calendar days regarding such dispute, and if the Parties are unable to resolve such dispute within said thirty (30) calendar day period, then the Parties shall engage in the dispute resolution procedure set forth in Section 13. SDG&E's obligations with respect to maintenance of the Subleased Space shall be governed by the provisions of Section 12 of the FSA.

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

SECTION 7 – CLOSING OR CONDEMNATION OF PROPERTY

7.1 Closing. During the Generation Phase, Customer will give SDG&E a minimum of ninety

(90) calendar days notice of its intent to close or abandon the Property for an indefinite period.

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

SECTION 8 - CHANGED CONDITIONS

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

SECTION 9 - HAZARDOUS MATERIALS

9.1 Hazardous Materials. The term "Hazardous Materials" means any substance considered hazardous under any environmental law, including, but not limited to, Hazardous Materials Transportation Act, as amended (49 U.S.C. 1801, et. seq.), the Resource Conservation and Recovery Act ("RCRA"), as amended (42 U.S.C. 6901, et. seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code, Sections 25300 et seq.), the California Hazardous Waste Control Law (under California Health and Safety Code Section 25000, et. seq.), the Occupational Safety and Health Act (29 USC Section 651 et seq.), the California Occupational Safety and Health Act (California Labor Code Sections 6300 et seq.), the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended (42 U.S.C. 9601, et. seq.) and the California Hazardous Substances Account Act ("HSAA"), as the same may be reauthorized (California Health & Safety Code 25300 et seq.) and the regulations adopted and publications promulgated thereunder.

SECTION 10 - REPRESENTATIONS AND WARRANTIES

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

- a) It has all requisite power, authority, licenses, and permits, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder.
- b) Its execution, delivery, and performance of this Agreement have been duly authorized and all necessary corporate action to consummate the transactions contemplated hereunder have been completed, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation, except as limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other applicable laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.
- c) Subject to the written consent of the City of San Diego to the FSA and this Agreement and the consent of the trustee with respect to the tax exempt bonds issued

in connection with the construction of the Science Center, its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound or affected.

- d) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits, or orders that would materially and adversely affect its ability to perform hereunder.

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

- a) It intends to continue to use the Property in a manner similar to its present use, and to the same extent.
- b) To the best of its knowledge it has provided or will provide timely to SDG&E all applicable records requested by SDG&E and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects and not contain any omissions necessary to prevent the information provided from being misleading. In this Agreement, the term "to Sublandlord's actual knowledge" and like phrases mean the actual present and conscious awareness or knowledge of Craig Blower, Customer Chief Operating Officer, without any duty of inquiry or investigation; provided that so qualifying Customer's knowledge shall in no event give rise to any personal liability on the part of any officer or employee of Customer, on account of any breach of any representation made by Customer herein.

SECTION 11 - INSURANCE

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

11.2 Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State of California, SDG&E and Customer shall maintain in force workers compensation insurance for all of its employees. SDG&E and Customer shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 (One Million Dollars) per accident and per employee for disease. In lieu of such insurance, SDG&E and Customer may maintain a Worker's Compensation self-insurance program meeting the requirements of the State of California.

11.3 Self-Insurance. So long as SDG&E or any entity that it controls, is controlled by or is under common control with, is the contracting party under this Agreement, SDG&E may elect to assume, insure or maintain a plan of self- insurance for all or any part of the applicable insurance required of SDG&E under this Agreement in the same manner provide under Section 22.7 of the FSA.

SECTION 12 - INDEMNIFICATION

12.1 Patent Indemnity. SDG&E will protect, defend, indemnify and hold the Customer

harmless against and from all claims, judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees relating to alleged patent or copyright infringement, misappropriation of proprietary rights, or trade secrets or similar claims, resulting from actions taken by SDG&E concerning this Agreement.

12.2 Environmental Indemnity.

12.2.1 Pre-Existing Hazardous Materials. To the fullest extent permitted by law, the Customer shall indemnify and hold harmless SDG&E, its employees, agents and subcontractors, from and against all claims, damages, losses and expenses, including but not limited to consultants' fees and attorneys' fees ("Environmental Liabilities"), arising out of or resulting from the presence of Hazardous Materials (as defined in Section 9.1) at the Property or performance of the work in or around the Property affected by Hazardous Materials (except for such materials brought to the Property or generated on the Property by SDG&E), including, but not limited to, any claims, damages, losses and expenses arising out of the ownership, transportation (whether by rail, truck, air and/or other means) and/or disposal of any of the materials described as Hazardous Materials (as defined in Section 9.1). Provided that SDG&E shall use reasonable care upon encountering any such pre-existing materials and shall not unreasonably expose such materials or create additional risk by its actions. The work in the affected area of the Property will not be resumed except by written agreement between the Customer and SDG&E. SDG&E will not be required to do any work relating to such pre-existing Hazardous Materials. The cost of removal and disposal of such Hazardous Materials shall be born solely by the Customer.

12.2.2 SDG&E's Hazardous Materials. SDG&E shall indemnify and hold harmless Customer from all Environmental Liabilities arising out of Hazardous Materials brought to the Property or generated on the Property by SDG&E and released or spilled during the installation or operation of the Energy System (except when caused by the sole negligence or willful misconduct of Customer).

12.3 Indemnity. SDG&E will indemnify, defend and hold the Customer, Customer's employees, agents, representatives, contractors, subcontractors, consultants and the City, harmless from all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, consultant fees and expert witness fees, arising out of, connected with, or resulting from (a) SDG&E's breach or event of default under this Agreement or (b) the negligence or willful misconduct of SDG&E's employees or agents, except to the extent such claims, damages, expenses, or liabilities result from the sole negligence or willful misconduct of Customer. In no event shall either Party be obligated to indemnify or hold harmless the other Party from or against indirect, incidental, consequential or punitive damages and each Party hereby expressly waives the right to assert such indirect, incidental, consequential or punitive damages. The duty to indemnify will continue in full force and effect despite the expiration or termination of this Agreement for a period of three (3) years, and will exist with respect to any claims based on facts or conditions that occurred before any said termination.

SECTION 13 - DISPUTES

13.1 Payment Disputes. Customer and SDG&E agree to use their best efforts to promptly resolve any disputes regarding invoices, so that payments to SDG&E are not unnecessarily delayed. Accordingly, within thirty (30) calendar days of receipt of an invoice from SDG&E, the Customer will notify SDG&E of the following: (i) all objections, in whole or part, the Customer has to the invoice; (ii) the specific dollar amount the Customer disputes, and (iii) the specific dollar amount the Customer does not dispute. The Customer will also attach all documents and calculations on which the Customer relies upon to support its objections. In all instances, the Customer will pay SDG&E the undisputed portion of the invoice within the periods set forth in the Agreement. SDG&E's acceptance of a payment in an amount less than that stated in its invoice is not a concession by SDG&E that the full amount stated is not

due and owing. The parties will resolve the disputed portion of the payment(s) according to Section 13.2.

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

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

SECTION 14 - CONDITIONS BEYOND THE CONTROL OF THE PARTIES

14.1 Force Majeure. If SDG&E or the Customer shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, insurrections or riots, or similar "force majeure" events, civil unrest, terrorist acts, war, labor disputes, labor strikes, inclement weather, fire, earthquake, tsunami, hurricane, flood, tornado or other acts beyond the reasonable control of such Party (each, a "Force Majeure Event"), then this Agreement shall remain in effect, but the non-performing Party's obligations shall be suspended until the said Force Majeure Event shall have ended. Alternatively, the Agreement may be terminated by either Party as provided in Section 2, in which event the Parties shall have the rights and obligations set forth in said section.

14.2 Regulatory Risk. If any federal, state, or municipal government or regulatory authority, including, without limitation, the CPUC, should for any reason enter an order, modify its rules or codes, or take any action whatever, that disallows utility ownership of generation systems, or *materially affects SDG&E's expectations regarding the purpose and operation of this Agreement*, SDG&E may immediately terminate the Agreement on written notice to Customer. In such event, SDG&E may elect whether to remove the Energy System subject to the provisions of the FSA or sell it to Customer (in which case the purchase price shall be determined in accordance with Section 2.3.2(b)), and no Termination Fee shall be due or payable by Customer and all rent previously paid to the Landlord under the FSA shall remain the Property of the Customer.

SECTION 15 - MISCELLANEOUS

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

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

Customer: **Reuben H. Fleet Science Center**
P.O. Box 33303
San Diego, CA 92163
Attn.: Craig Blower, COO
Telecopy: (619) 685-5777
Telephone: (619) 238-1233 Ext. 701

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

15.3 Assignment. Each Party may assign or transfer all or part of its rights, obligations, or interests in this Agreement, only after obtaining the written consent of the other Party which consent will not be unreasonably withheld, conditioned or delayed, provided that it shall not be unreasonable for Customer to withhold approval based on its sole reasonable assessment of the financial or technical capabilities of the proposed assignee or the failure of such entity to have sufficient prior experience operating systems equivalent to the Energy System. Any proposed assignee or transferee shall expressly assume in writing the duties and obligations of the assigning Party under this Agreement and shall immediately furnish or cause to be furnished to the other Party a true and correct copy of the document or documents evidencing such assignment or transfer and assumption of duties and responsibilities. Any purported assignment or transfer of any right, obligation or interest in this Agreement which fails to comply with this section shall be void and of no effect. If an assignment of all or part of the rights, obligations, and interests has been approved as provided in this section, the assignee or transferee shall become a party for all purposes under this Agreement and the assuming Party shall no longer be a party.

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

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

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

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

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

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

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

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

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

SECTION 16 – LIMITATION OF LIABILITY

16.1 No Consequential Damages. Except as expressly set forth in this Agreement, neither Party shall have liability to the other for any direct, indirect, incidental, consequential or punitive damages.

[Remainder of page intentionally left blank.]

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

**SAN DIEGO GAS & ELECTRIC
COMPANY,**
A California corporation

**SAN DIEGO SPACE & SCIENCE
FOUNDATION,**
a California non-profit organization

By: 
Name: Joseph S. Velasquez
Title: Director, Conn's Ted Services

By: 
Name: Jeffrey W. Kirsch
Title: Executive Director

EXHIBIT "A"

ENERGY SYSTEM DESCRIPTION

Photovoltaic (PV) System

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

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

General Materials

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

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