

## PHOTOVOLTAIC EQUIPMENT USE AGREEMENT

This PHOTOVOLTAIC EQUIPMENT USE AGREEMENT (this "*Use Agreement*") is entered into as of August 22, 2006, by and between the CALIFORNIA FAIRS FINANCING AUTHORITY, a joint powers authority and separate public entity of the State of California (the "*Authority*"), and the COUNTY OF MARIN, a county of the State of California (the "*Fair Entity*").

WHEREAS, the Authority is acquiring and financing the photovoltaic equipment and related property described in *Exhibit 1* attached hereto (the "*Equipment*") from National City Commercial Capital Corporation, as lessor (the "*Lessor*"), under that certain Master Photovoltaic Equipment Lease-Purchase Agreement dated as of June 2, 2006, and Lease Schedule No. 2006-1 thereto dated as of June 2, 2006 and incorporating the terms and conditions thereof (collectively, the "*Financing Lease*"), between the Lessor and the Authority, as lessee, a copy of which has been made available to the Fair Entity; and

WHEREAS, the Fair Entity would like to use the Equipment and have the Authority install the Equipment at various locations on the Fair Entity's fairgrounds (the "*Fairgrounds*"), and the Authority is willing to install the Equipment for the Fair Entity on the Fairgrounds for purposes of this Use Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority and the Fair Entity hereby agree as follows:

*Section 1. Use of the Equipment; Subordination.* (a) The Authority hereby licenses to the Fair Entity the use of the Equipment on the Fairgrounds for the Term hereafter provided.

(b) This Use Agreement and the Fair Entity's rights hereunder shall at all times be subject and subordinate to the Financing Lease, without the need for any further act or agreement by the Fair Entity.

(c) In connection with the financing of the Equipment, the Authority has pledged to the Lessor as security for payment and performance of the Authority's obligations under the Financing Lease all of the Authority's rights and interests under this Use Agreement, including the right to receive the user fees, late charges and other amounts payable hereunder, and the self-generation incentive payments to be paid with respect to the Equipment to be used hereunder, to which pledge and security the Fair Entity hereby agrees and consents. To secure payment of its user fees to the Authority, the Fair Entity hereby grants a first priority security interest to the Authority in and to the self-generation incentive payments that are payable with respect to the Equipment to be used hereunder and consents to the pledge and security interest granted by the Authority in and to such self-generation incentive payments to the Lessor as security for the payments under the Financing Lease.

(d) The Fair Entity hereby acknowledges that the Equipment to be installed on the Fairgrounds is subject to a first priority security interest granted by the Authority in favor of the Lessor. The Fair Entity hereby waives any right or interest in the Equipment other than its rights

to use and enjoy the Equipment in accordance with the terms of this Use Agreement for the Term hereof.

*Section 2. Installation of the Equipment.* The Authority shall install the Equipment at the locations on the Fairground described in *Exhibit 1* attached hereto.

*Section 3. Term.* The term of this Use Agreement (the “*Term*”) shall commence as of the date first above written and end on the date on which the Financing Lease terminates in accordance with Section 3 thereof.

*Section 4. User Fees; Late Charges; Other Payments.* (a) The Fair Entity shall pay to the Authority an amount equal to \$942,170.01 (representing the Authority’s cost to acquire and install the Equipment, including any reimbursed amounts, to be used under this Use Agreement) *plus* interest accruing thereon from the Lease Commencement Date under the Financing Lease at the rate of five and fifteen hundredths percent (5.15%) per annum, which amount shall be payable in installments commencing on the first day of the first month after the date on which the Equipment subject to this Use Agreement has been accepted by the Authority for purposes of the Financing Lease (the “*Equipment Acceptance Date*”). Such installments shall be payable in such amounts and on such dates as are provided in the amortization schedule that is required to be prepared and delivered pursuant to the Financing Lease within five (5) days after the Equipment Acceptance Date. The amortization schedule so provided by the Authority shall be conclusive and binding on the Fair Entity (absent manifest error).

(b) So long as the Fair Entity has the right to beneficial use and enjoyment of the Equipment, the obligations of the Fair Entity to pay user fees, late charges and other amounts under this Use Agreement, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of this Use Agreement and without notice or demand by the Authority or the Lessor, notwithstanding any dispute between the Authority and the Fair Entity or any other person. The Fair Entity shall not assert any right of set-off, counterclaim or abatement against its obligation to pay user fees under this Use Agreement except as expressly provided in the next succeeding paragraph.

(c) If there is substantial interference with or loss of the Fair Entity’s beneficial use or enjoyment of the Equipment under this Use Agreement, user fees, late charges and other amounts due hereunder shall be abated in the same proportion that the portion of such Equipment is unavailable for the Fair Entity’s beneficial use or enjoyment bears to the entire Equipment subject to this Use Agreement. The Fair Entity hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all right to terminate this Use Agreement by virtue of any such interference, and this Use Agreement shall continue in full force and effect. The Fair Entity shall notify the Authority in writing of any threat to its use or enjoyment of the Equipment within 10 days after it learns of such threat. The obligation to pay full user fees, late charges and other amounts due hereunder shall recommence as of the date the Fair Entity has regained beneficial use and enjoyment of the Equipment, and the provisions of this Use Agreement, including (without limitation) dates on which user fees are due, shall be

extended for a period equal to the period the obligation to make user fees, late charges and other amounts due was abated under this Use Agreement.

(d) The Fair Entity shall be entitled to prepay user fees, in whole or in part, to the same extent and on the same conditions as the Authority is entitled to prepay Rent Payments in accordance with the Financing Lease.

(e) The Fair Entity shall pay a late charge to the Authority equal to five percent (5%) of the monthly installment for any monthly installment that is paid more than ten days after its due date.

(f) The Fair Entity hereby covenants to take such action as is necessary under the laws applicable to the Fair Entity to budget for and include and maintain funds sufficient and available to discharge its obligation to pay user fees, late charges and other amounts due under this Use Agreement in each of its fiscal years during the Term hereof. The covenants on the part of the Fair Entity herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the Fair Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Fair Entity to carry out and perform the covenants and agreements in this Use Agreement to be carried out and performed by the Fair Entity.

(g) The user fees, late charges and other amounts that are due and payable under this Use Agreement for each fiscal year of the Fair Entity during the Term hereof shall constitute the total fees and charges for such fiscal year and shall be paid by the Fair Entity for and in consideration of the right to use and enjoy the Equipment during each such fiscal year for which said user fees are to be paid.

(h) The Fair Entity hereby agrees to pay its *pro rata* share, based on its percentage of financing costs relating to the Equipment as a portion of all photovoltaic equipment financed by the Authority under the Financing Lease, to assure that amounts are available to the Authority at any time to pay or prepay Rent Payments when due in accordance with the terms of the Financing Lease. The Authority's determination of the Fair Entity's percentage of financing costs and the amount to be paid by the Fair Entity pursuant to this subsection shall be conclusive against the Authority and the Fair Entity (absent manifest error).

***(i) The Fair Entity hereby expressly acknowledges and agrees that its obligation to pay user fees, late charges and other amounts payable hereunder is, and shall be construed to be, absolute and unconditional as herein provided regardless of whether any self-generation incentive payments with respect to the Equipment are in fact paid by Pacific Gas and Electric Company or Southern California Edison Company (as the case may be). Any shortfall in the amount of any such self-generation incentive payments shall not reduce the Fair Entity's obligation to pay user fees, late charges or any other amounts under this Use Agreement.***

*Section 5. Title to the Equipment.* Title to the Equipment shall be and remain at all times in the Authority during the Term of this Use Agreement. Nothing in this Use Agreement shall vest in the Fair Entity any right or title in or to the Equipment other than the right to use

and enjoy the Equipment on the terms and conditions provided in this Use Agreement for the Term hereof.

*Section 6. Use and Maintenance of Equipment.* The Fair Entity shall use the Equipment for the production of energy. The Fair Entity shall not sublet or lend any Equipment or permit it to be used by anyone other than the Fair Entity and its employees. The Fair Entity shall keep the Equipment in good condition and repair.

*Section 7. Risk of Loss.* The Authority retains all risks of loss or damage to the Equipment from any cause whatsoever as provided in the Financing Lease; *provided, however*, that the Fair Entity shall also obtain and maintain, at its expense, such property damage and public liability insurance as the Authority shall require and the Fair Entity customarily maintains with respect to the Fairgrounds and improvements thereon, including the Equipment subject to this Use Agreement. The proceeds of the insurance relating to the Equipment shall be used by the Authority to either replace the Equipment or prepay its Rent Payments under the Financing Lease, which shall be applied as a credit against the user fees that the Fair Entity is to pay under this Use Agreement. The Fair Entity shall not be relieved of its obligations to user fees under this Use Agreement because of inadequate insurance coverage or proceeds to completely pay for loss of or damage to the Equipment.

*Section 8. Access to Equipment.* The Authority shall have access to the Fairgrounds for the purpose of installing, inspecting, maintaining, repairing, modifying, improving or removing the Equipment. The Lessor shall have access to the Fairgrounds for the purpose of de-installing and repossessing the Equipment and otherwise exercising its remedies with respect to the Equipment upon the occurrence of an Event of Default under the Financing Lease or hereunder.

*Section 9. Taxes.* The Fair Entity shall be responsible for all property taxes associated with the Equipment.

*Section 10. Assignment and Subletting.* The Fair Entity may not assign or transfer this Use Agreement, the Equipment or any rights to the Equipment without the prior written consent of the Authority and the Lessor.

*Section 11. Events of Default; Remedies.* (a) The occurrence of any one or more of the following events shall constitute an “*Event of Default*” under this Use Agreement: (i) the Fair Entity fails to pay user fees (or any other payment) as it becomes due in accordance with the terms of this Use Agreement and any such failure continues for ten (10) days after the due date thereof; (ii) the Fair Entity fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Use Agreement and such failure is not cured within thirty (30) days after receipt of written notice thereof by the Authority or the Lessor; or (iii) the Fair Entity applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of the Fair Entity or of all or a substantial part of its assets, or a petition for relief is filed by or against the Fair Entity under any federal or state bankruptcy, insolvency, moratorium or similar law.

(b) Upon the occurrence of an Event of Default under this Use Agreement, the Authority or the Lessor (as the Authority's assignee for this purpose) shall have the right, at its sole option and without any further demand or notice, to take any one or more remedial steps as may be customary for similar obligations as this Use Agreement and as are otherwise provided or permitted by law.

*Section 12. Attorney's Fees.* If any controversy, claim or dispute arises relating to this Use Agreement, the prevailing party shall recover its expenses, costs and reasonable attorneys' fees from the losing party, in addition to any other relief to which that party may be entitled.

*Section 13. Entire Agreement.* This Use Agreement supersedes all prior and contemporaneous agreements, representations and understanding of the parties with respect to the subject matter hereof.

*Section 14. Amendment.* No supplement, modification or amendment of this Use Agreement shall be binding unless executed in writing by both parties and consented to by the Lessor.

*Section 15. Waiver.* No waiver of any of the provisions of this Use Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Executed as of the date first set forth above.

CALIFORNIA FAIRS FINANCING AUTHORITY

COUNTY OF MARIN, CALIFORNIA

By: \_\_\_\_\_  
J. Thomas Baker  
Executive Officer  
1776 Tribute Road, Suite 220  
Sacramento, California 95815

By: \_\_\_\_\_  
Name: Susan L. Adams  
Title: President,  
Marin County Board of Supervisors

ATTEST:

By: \_\_\_\_\_  
Name: Matthew Hymel  
Title: Clerk of the Board

## **EXHIBIT 1**

### **DESCRIPTION OF THE PROJECT FOR MARIN COUNTY**

- Install 1,584 Kyocera KC-158G photovoltaic modules on the Exhibition Building to generate electricity. The modules will feed two Xantrex PV100S480, 100 kW inverters. Each inverter will have an isolation transformer, 1 DC and 1 AC disconnect switch. The AC disconnect switches will tie into Pacific Gas & Electric service at the 1200 AMP, 277/480 volt Exhibit Building switchboard.