

## **APPENDIX A**

**CO-TENANCY AND SHARED FACILITIES AGREEMENT**

**by and among**

**DESERT SUNLIGHT 250, LLC,**

**DESERT SUNLIGHT 300, LLC**

**and**

**DESERT SUNLIGHT HOLDINGS, LLC**

**dated as of September 29, 2011**

## **CO-TENANCY AND SHARED FACILITIES AGREEMENT**

This **CO-TENANCY AND SHARED FACILITIES AGREEMENT** (this “**Agreement**”) is made as of September 29, 2011 (the “**Effective Date**”) by and among DESERT SUNLIGHT 250, LLC, a Delaware limited liability company (“**Desert 250**”), DESERT SUNLIGHT 300, LLC, a Delaware limited liability company (“**Desert 300**,” and together with Desert 300, the “**Co-Tenants**”) and DESERT SUNLIGHT HOLDINGS, LLC, a Delaware limited liability company (“**Holdings**,” and, in its capacity as manager, together with its successor in such capacity, the “**Manager**”). Desert 250, Desert 300 and the Manager are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

### **RECITALS**

WHEREAS, Desert 250 is planning to develop, construct, own, operate and maintain an approximately 250 MW solar photovoltaic generating facility located in Desert Center, California, on the real property as more particularly described on Exhibit A-1 hereto, which does not include the Shared Facilities and Rights (the “**250 MW Generating Facility**”);

WHEREAS, Desert 300 is planning to develop, construct, own, operate and maintain an approximately 300 MW solar photovoltaic generating facility located in Desert Center, California, on the real property as more particularly described on Exhibit A-2 hereto, which does not include the Shared Facilities and Rights (the “**300 MW Generating Facility**,” and collectively with the 250 MW Generating Facility, the “**Generating Facilities**”);

WHEREAS, the Co-Tenants are jointly planning to develop, construct, own, operate and maintain the Shared Facilities and Rights (as defined below) and desire to use the Shared Facilities and Rights pursuant to the terms of this Agreement; and

WHEREAS, the Co-Tenants have obtained or will obtain certain rights-of-way, easements, leases and other instruments or agreements that create or evidence real property interests in respect of the Shared Facilities, including those instruments and agreements more particularly described on Part I of Exhibit B hereto (collectively, the “**Shared Premises Agreements**”), and that provide for the right to develop, construct, own, operate and/or maintain the Shared Facilities on the real property as more particularly described on Exhibit C hereto (the “**Shared Premises**”).

NOW, THEREFORE, in consideration of the mutual premises set forth above and the covenants, agreements and provisions made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties agrees as follows:

### **AGREEMENT**

## 1. DEFINITIONS; INTERPRETATION

1.1 Definitions. As used herein, the following terms shall have the following meanings:

“**250 MW Generating Facility**” has the meaning set forth in the recitals to this Agreement.

“**300 MW Generating Facility**” has the meaning set forth in the recitals to this Agreement.

“**Advance**” has the meaning set forth in Section 6.3.

“**Affiliate**” means, with respect to a Person, each Person that controls, is controlled by, or is under common control with, such Person; provided, however, that no Party shall be considered an Affiliate of any other Party for purposes of Section 4.3.3 or Article 7. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies (whether through ownership, by contract or otherwise) of a Person.

“**After-Acquired Shared Facilities and Rights**” means any and all interests in any real or personal property, contractual right or any other asset acquired after the Effective Date that is reasonably expected to be part of the Shared Facilities and Rights.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Applicable Law**” means any duly promulgated Federal, state and local law, regulation, rule, ordinance, code, decree, judgment, directive or judicial or administrative order, permit and other duly authorized and valid action of any Governmental Authority applicable to any of the Shared Facilities and Rights, either Generating Facility, this Agreement or any Party, as applicable.

“**Arbitration Rules**” has the meaning set forth in Section 10.1.2.

“**Bankruptcy Event**” means, with respect to a Person, if such Person (a) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) has any such petition filed or proceeding or action commenced against it by its creditors and such petition, proceeding or action is not dismissed within sixty (60) days after the filing or commencement, (c) except for an assignment pursuant to Section 10.2.2, makes an assignment or any general arrangement for the benefit of creditors, (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets or (e) is generally unable to pay its debts as they fall due.

“**Budget**” has the meaning set forth in Section 6.2.2.

“**Business Day**” means any day, other than a Saturday, Sunday or any other day on which commercial banks in the State of California are required or authorized to close.

“**CAISO**” means the California Independent System Operator Corporation.

“**CAISO Side Letter**” means the Letter Agreement re: Participating Generator Agreement and Meter Service Agreement for Desert 300 and Desert 250, dated as of August 17, 2011, between Holdings and CAISO.

“**Claims**” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, taxes, judgments, damages, losses and expenses, including reasonable attorneys’ fees and expenses.

“**Condemnation Action**” means the taking of all or any portion of the Shared Facilities and Rights as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale or conveyance of all or any portion of the Shared Facilities and Rights under the threat or in lieu thereof.

“**Contributing Party**” has the meaning set forth in Section 6.3.

“**Contribution**” has the meaning set forth in Section 6.3.

“**Co-Tenancy Interest**” has the meaning set forth in Section 4.1.1(a).

“**Co-Tenancy Percentage Interest**” means (a) with respect to Desert 250, 45.45% and (b) with respect to Desert 300, 54.55%.

“**Co-Tenants**” has the meaning set forth in the preamble to this Agreement.

“**Defaulting Party**” has the meaning set forth in Section 9.1.

“**Desert 250**” has the meaning set forth in the preamble to this Agreement.

“**Desert 250 Master Agreement**” means the Master Agreement, dated as of the date hereof, among Desert 250, Holdings, the U.S. Department of Energy, the lenders and the letter of credit issuers signatory thereto, Deutsche Bank Trust Company Americas, as Master Administrative Agent, Deutsche Bank Trust Company Americas, as Collateral Agent, Deutsche Bank Trust Company Americas, as Intercreditor Agent, Deutsche Bank Trust Company Americas, as A-1 Administrative Agent, Deutsche Bank Trust Company Americas, as A-2 Administrative Agent, Deutsche Bank Trust Company Americas, as A-3 Administrative Agent, the other agents party thereto and the other persons party thereto.

“**Desert 250 Parties**” has the meaning set forth in Section 7.1.1.

“**Desert 300**” has the meaning set forth in the preamble to this Agreement.

“**Desert 300 Master Agreement**” means the Master Agreement, dated as of the date hereof, among Desert 300, Holdings, the U.S. Department of Energy, the lenders and the letter of credit issuers signatory thereto, Deutsche Bank Trust Company Americas, as Master Administrative Agent, Deutsche Bank Trust Company Americas, as Collateral Agent, Deutsche Bank Trust Company Americas, as Intercreditor Agent, Deutsche Bank Trust Company

Americas, as A-1 Administrative Agent, Deutsche Bank Trust Company Americas, as A-2 Administrative Agent, Deutsche Bank Trust Company Americas, as A-3 Administrative Agent, the other agents party thereto and the other persons party thereto.

“**Desert 300 Parties**” has the meaning set forth in Section 7.1.1.

“**Desert Tariff**” has the meaning set forth in Section 4.15.

“**Designated Agreements**” has the meaning set forth in Section 4.10.

“**Discriminate**” has the meaning set forth in Section 4.3.6.

“**Disputing Party**” has the meaning set forth in Section 10.1.1.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

“**Emergency**” means (a) an “Emergency Condition” under the LGIA or (b) an imminent event, condition or situation that, in the reasonable judgment of the applicable Co-Tenant, is likely to (i) endanger life or property or (ii) have a material adverse effect on either Generating Facility or any of the Shared Facilities and Rights or the LGIA.

“**Event of Default**” has the meaning set forth in Section 9.1.

“**Event of Loss**” means damage to, destruction of, or other property casualty to any of the Shared Facilities.

“**Excluded Lien**” means, with respect to a Co-Tenant, (a) all matters filed of record or would be shown on a survey, validly existing and affecting a particular asset or property as of the Effective Date, (b) any zoning, entitlement, conservation restriction and other land use and environmental regulations by any Governmental Authority, (c) any minor imperfection of title or other Lien that, individually or in the aggregate, would not be reasonably expected to be material, (d) a Lien granted on such Co-Tenant’s Co-Tenancy Interests as security to the Lenders, (e)(i) Liens to secure mandatory statutory obligations, (ii) Liens for any tax, assessment or other governmental charge, and (iii) materialmen’s, mechanics’, workers, repairmen’s, employees’ or other like Liens, in the case of clauses (e)(ii) – (iii) immediately above, that are for amounts not yet due, or amounts being contested in good faith by appropriate proceedings and reserved against in accordance with GAAP and, in the case of clauses (e)(i) – (iii) immediately above, so long as such Liens arise in the ordinary course of business for the Shared Facilities and Rights or in connection with the development, construction, operation or maintenance thereof and shall not involve any reasonable likelihood of the sale, forfeiture or loss of any material interest in, or materially interfere with the use of, the Shared Facilities and Rights, (f) Liens arising out of judgments or awards so long as enforcement of such Liens have been stayed and an appeal or proceeding for review is being prosecuted in good faith by appropriate proceedings and are reserved against in accordance with GAAP or are fully covered by insurance, (g) all electric, telephone, gas, sanitary sewer, storm sewer, water and other utility lines, pipelines, service lines and facilities of any nature now located on, over or under the property, and all licenses, easements, rights-of-way and other similar agreements relating thereto, (h) all existing public and private roads and streets (whether dedicated or undedicated), and all railroad lines and rights-of-

way, and (i) all rights with respect to the ownership, mining, extraction and removal of minerals of whatever kind and character (including all coal, iron ore, oil, gas, sulfur, methane gas in coal seams, limestone and other minerals, metals and ores) that have been granted, leased, excepted or reserved prior to the Effective Date.

“**Federal Power Act**” means the Federal Power Act of 1935.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Force Majeure**” means any event, condition or situation that occurs subsequent to the Effective Date that delays or prevents a Party’s performance of its obligations under this Agreement but only to the extent that such event is not attributable to the fault or negligence on the part of such Party and is caused by factors beyond such Party’s reasonable control, which may include any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment or any order, regulation or restriction imposed by Governmental Authorities; provided, however, that no Party’s failure to perform any payment obligation pursuant to this Agreement or any change in a Party’s financial condition or other economic hardship shall constitute a Force Majeure.

“**GAAP**” means generally accepted accounting principles for financial reporting in the United States of America, applied on a consistent basis.

“**Generating Facilities**” has the meaning set forth in the recitals to this Agreement.

“**Generating Facility Construction Agreements**” means each agreement entered into by Desert 250 or Desert 300 for the engineering, procurement and construction of its Generating Facility.

“**Gen-Tie Line**” means the 230 kV generation tie-line extending from the Generating Facilities to the last Co-Tenant-owned dead-end tower located outside Red Bluff Substation property line.

“**Governmental Approvals**” means any licenses, approvals, consents, exemptions, agreements, authorizations or permits of, notifications to or filings or registrations with, any Governmental Authority relating to the Shared Facilities and Rights or the Generating Facilities, as applicable.

“**Governmental Authority**” means any executive branch, legislature, court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States of America or any domestic state, county, city or other political subdivision or similar governing entity.

“**Holdings**” has the meaning set forth in the preamble to this Agreement.

“**Interconnection Customer’s Interconnection Facilities**” has the meaning set forth in the LGIA.

“**Interest Rate**” means the interest rate calculated pursuant to 18 C.F.R. § 35.19a.

“**kV**” means kilovolts of electrical force.

“**Lenders**” means the Persons (including the U.S. Department of Energy, as a loan guarantor) providing loans, other credit or bond facilities, hedging facilities or other financing under any financing, hedge or credit agreements, note purchase agreements, bond indentures or lease agreement (or, in each case, any administrative, collateral or other agent in that capacity acting on behalf of such Persons), in each case, for the financing or refinancing of the development, construction, operation or maintenance of either Generating Facility or the Shared Facilities and Rights, as applicable.

“**LGIA**” means the Standard Large Generator Interconnection Agreement, dated August 4, 2010, among CAISO, the Participating TO and Holdings, as assigned to the Co-Tenants pursuant to the Assignment Agreement, dated as of July 21, 2011, and as further amended by the First Amendment to Standard Large Generator Interconnection Agreement, dated as of August 19, 2011, among CAISO, the Participating TO and the Parties.

“**LGIA Co-Tenancy Agreement**” means the Large Generator Interconnection Agreement Co-Tenancy Agreement, dated as of August 19, 2011, among the Parties, as amended by the First Amendment to the Large Generator Interconnection Agreement Co-Tenancy Agreement, dated as of September 28, 2011.

“**Lien**” means any mortgage, lien, pledge, charge, claim, security interest or other encumbrance, including any liens for taxes and assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier liens or other similar liens or claims.

“**Manager**” has the meaning set forth in the preamble to this Agreement.

“**Manager Parties**” has the meaning set forth in Section 4.3.3.

“**Modification**” has the meaning set forth in Section 4.7.

“**MW**” means megawatts of electrical power.

“**Non-Contributing Party**” has the meaning set forth in Section 6.3.

“**Non-Defaulting Party**” means each Party other than the Defaulting Party.

“**Notice of Dispute**” has the meaning set forth in Section 10.1.1.

“**Participating TO**” has the meaning set forth in the LGIA.

“**Party**” and “**Parties**” have the meanings set forth in the preamble to this Agreement.

“**Person**” means any natural person, domestic or foreign corporation, limited liability company, general or limited partnership, joint venture, association, joint stock company, business trust, estate, trust, enterprise, unincorporated organization, Government Authority or any other legal or commercial entity.



**“Point of Interconnection”** has the meaning set forth in the LGIA.

**“Power Purchase Agreements”** means (a) the Power Purchase and Sale Agreement, dated as of February 24, 2010, between Pacific Gas and Electric Company and Holdings, as amended by the First Amendment dated as of May 5, 2010, as further amended by the letter re: Desert 300 Power Purchase Agreement, dated September 9, 2011, and as assigned to Desert 300 pursuant to the Assignment and Assumption Agreement of Power Purchase and Sale Agreement, effective as of September 26, 2011, and (b) the Renewable Power Purchase and Sale Agreement, dated as of August 17, 2009, between Southern California Edison Company and Desert 250 (f/k/a Desert Sunlight LLC), as amended by Amendment No. 1 to the Renewable Power Purchase and Sale Agreement, effective as of September 27, 2011.

**“Project”** means, collectively, the Generating Facilities and the Shared Facilities.

**“Prudent Industry Practice”** means any of the practices, methods or acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods or acts that, under reasonable judgment exercised in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. As used in this Agreement, Prudent Industry Practice is not limited to the optimum practice, method or act to the exclusion of all others, but rather it includes all and any acceptable practices, methods or acts generally accepted in the region.

**“Red Bluff Substation”** has the meaning set forth in the LGIA.

**“Requesting Party”** has the meaning set forth in Section 4.7.

**“Shared Facilities”** means (a) the switchyard for the Generating Facilities, including the 230 kV disconnect switches located therein, (b) the Gen-Tie Line, (c) all required CAISO-approved metering equipment, (d) all required Participating TO-metering equipment, (e) the metering cabinet to house the retail meters, (f) the G.E. L90 current differential relay and SEL 311L current differential relay, (g) the 120-volt power supply for the remote terminal unit, (h) any other Interconnection Customer’s Interconnection Facilities, (i) any access roads used in connection with the assets, property or equipment described in clauses (a) – (h) or (j) of this definition, (j) all other assets, property (real or personal) and equipment necessary to deliver energy from the Generating Facilities to the Point of Interconnection and (k) any Modification to the assets, property or equipment described in clauses (a) – (j) immediately above, all as more particularly described in Section 3 of Exhibit A to the Shared Facilities Construction Agreement and Exhibit A to the Shared Facilities Equipment Supply Agreement. For avoidance of doubt, the Shared Facilities includes the entire design capacity of such assets, property and equipment, as applicable, constituting the Shared Facilities.

**“Shared Facilities and Rights”** means, collectively, the Shared Facilities and the Shared Rights. For the avoidance of doubt, the Shared Facilities and Rights include After-Acquired Shared Facilities and Rights.

**“Shared Facilities and Rights Agreements”** means any agreement for the development, construction, ownership, operation or maintenance of any of the Shared Facilities, including

those agreements more particularly described on Exhibit B hereto; provided, however, that Shared Facilities and Rights Agreements shall not include the LGIA or any agreements solely for the benefit of a Generating Facility, including the Power Purchase Agreements and Generating Facility Construction Agreements.

**“Shared Facilities Construction Agreement”** means the Engineering, Procurement and Construction Agreement, dated as of the date hereof, between Desert 250 and Desert 300, as Owner, and First Solar Electric (California), Inc., as Contractor.

**“Shared Facilities Equipment Supply Agreement”** means the Supply Agreement, dated as of the date hereof, between Desert 250 and Desert 300, as Owner, and First Solar Electric (California), Inc., as Operator.

**“Shared Facilities O&M Agreement”** means the Operating and Maintenance Agreement, dated as of the date hereof, between Desert 250 and Desert 300, as Owner, and First Solar Electric (California), Inc., as Operator.

**“Shared Premises”** has the meaning set forth in the recitals to this Agreement.

**“Shared Premises Agreements”** has the meaning set forth in the recitals to this Agreement.

**“Shared Rights”** means (a) the Co-Tenants’ rights under each Shared Facilities and Rights Agreement and each Governmental Approval for the Shared Facilities, (b) all other rights (other than under the LGIA) necessary to deliver energy from the Generating Facilities to the Point of Interconnection or receive energy from the Point of Interconnection for the Generating Facilities and (c) any Modification to the rights described in clauses (a) – (b) immediately above.

**“Term”** has the meaning set forth in Section 2.1.

**“Third-Party User”** has the meaning set forth in Section 4.15.

**“Unassigned Shared Facilities and Rights”** means the interests and rights in respect of the California Department of Fish & Game Streambed Alteration Agreement.

**“Unpaid Contribution”** has the meaning set forth in Section 6.3.

1.2 Interpretation. In this Agreement, unless a clearly contrary intention appears (a) the singular number includes the plural number and vice versa, (b) reference to any Person includes such Person’s successors and permitted assigns, (c) reference to any gender includes each other gender, (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, hereof, (e) reference to any Article, Section or Exhibit means such Article, Section or Exhibit to this Agreement and references in any Article, Section, Exhibit or definition to any clause means such clause of such Article, Section, Exhibit or definition, (f) “hereunder,” “hereof,” “hereto,” “herein,” “herefrom,” and words of similar import are reference to this Agreement as a whole and not to any particular Article, Section, Exhibit or other provision hereof, (g) relative to the

determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including,” (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, (i) reference to any Applicable Law means any such Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, and includes any rules and regulations promulgated thereunder and (j) unless otherwise agreed, all consents and notifications required under this Agreement shall be in writing, except that all consents and notifications required under this Agreement shall be provided orally so long as Desert 250 and Desert 300 are both wholly-owned by the same Person.

## 2. TERM; TERMINATION

2.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the earlier of (a) written agreement by all the Parties to wind-up all the Shared Facilities and Rights (and completion of such wind-up) or otherwise terminate this Agreement and (b) the acquisition by a Co-Tenant of all of the ownership interests in all Shared Facilities and Rights (the “**Term**”). Upon expiration of the Term, each of the Parties shall be released from all of its obligations under this Agreement, except for those obligations that survive the expiration of the Term pursuant to Section 10.4. Except as provided in this Section 2.1, no Party shall have the right to terminate this Agreement after the Effective Date.

## 3. REGULATORY MATTERS

3.1 Filing. The Parties shall file this Agreement with FERC pursuant to Section 205 of the Federal Power Act as soon as practicable after the Effective Date.

3.2 Cooperation. Each Party shall provide any information reasonably requested by any other Party in connection with any filing made pursuant to Section 3.1 and shall otherwise reasonably cooperate with, and act in good faith to assist, the Parties in acquiring any necessary or desirable FERC action with respect to this Agreement.

## 4. SHARED FACILITIES AND RIGHTS AND THE GENERATING FACILITIES

### 4.1 Shared Facilities and Rights.

#### 4.1.1 Ownership.

(a) The Co-Tenants shall own the Shared Facilities and Rights as tenants-in-common, with each Co-Tenant owning an undivided ownership interest in all Shared Facilities and Rights in proportion to its Co-Tenancy Percentage Interest (a “**Co-Tenancy Interest**”). The Co-Tenants acknowledge and agree that, with respect to the Shared Facilities and Rights in or to which the Manager or either or both of the Co-Tenants acquired an interest or right before or on the Effective Date other than the Unassigned Shared Facilities and Rights, each Co-Tenant owns its Co-Tenancy Interest therein. Each Co-Tenant shall comply with all the terms and conditions of the Shared Facilities and Rights Agreements and Governmental Approvals for the Shared Facilities and Rights. Unless otherwise determined by the Co-Tenants,

any Co-Tenant that holds in its own name, or an Affiliate's name, any Unassigned Shared Facilities and Rights shall hold the same subject in all respects to this Agreement, and such Co-Tenant shall transfer and assign an undivided ownership interest therein to the other Co-Tenant equal to such other Co-Tenant's Co-Tenancy Percentage Interest as soon as practicable after the Effective Date, and do all things necessary or appropriate to register or record on any appropriate register the asset in the names of the Co-Tenants; provided, however, that the foregoing shall not restrict any Co-Tenant from partitioning those portions of any Unassigned Shared Facilities and Rights that are solely for the benefit of a Generating Facility, it being understood and agreed by the Co-Tenants that, in such event, a Co-Tenant's obligations hereunder with respect to any such Unassigned Shared Facilities and Rights shall not apply to the portions so partitioned and the portions so partitioned shall not constitute Shared Facilities and Rights, notwithstanding anything in this Agreement to the contrary. If any of the Unassigned Shared Facilities and Rights is encumbered by Liens (other than Excluded Liens) at the time of such conveyance, such Co-Tenant shall promptly and diligently work to remove such Liens therefrom.

(b) Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Parties acknowledge and agree that the Manager, in addition to the Co-Tenants, may be a party to one or more of the Shared Facilities and Rights Agreements and/or the Governmental Approvals for the Shared Facilities and Rights. Without limiting the generality of Section 4.3, the Manager shall comply with all the terms and conditions of such Shared Facilities and Rights Agreements and Governmental Approvals.

4.1.2 Waiver of Partition. The Co-Tenants recognize that the physical partition of the Shared Facilities and Rights or any part thereof, whether by partition in-kind or sale and division of the proceeds thereof, would be impossible and impractical and wholly inconsistent with the purposes for which this Agreement is made. ACCORDINGLY, EACH CO-TENANT HEREBY AGREES (FOR ITSELF AND FOR EACH OF ITS SUCCESSORS AND ASSIGNS) THAT IT SHALL NOT TAKE ANY ACTION AT ANY TIME, BY JUDICIAL PROCEEDING OR OTHERWISE, TO PARTITION THE SHARED FACILITIES AND RIGHTS OR ANY PART THEREOF, IN ANY WAY, WHETHER BY PARTITION IN-KIND OR BY SALE AND DIVISION OF THE PROCEEDS THEREOF. FURTHER, EACH CO-TENANT IRREVOCABLY WAIVES THE RIGHT OF PARTITION AND THE BENEFIT OF ALL STATUTORY OR COMMON LAW THAT MAY NOW OR HEREAFTER AUTHORIZE SUCH PARTITION OF THE SHARED FACILITIES AND RIGHTS OR ANY PART THEREOF. THE CO-TENANTS AGREE THAT THIS SECTION 4.1.2 SHALL BE INCLUDED VERBATIM IN THE MEMORANDUM TO BE RECORDED PURSUANT TO SECTION 10.16(b).

#### 4.1.3 Use.

(a) Each Co-Tenant may use the Shared Facilities and Rights up to its Co-Tenancy Percentage Interest for the purpose of transmitting energy from, and receiving energy for, its Generating Facility over the Shared Facilities. Each of Desert 250 and Desert 300 shall only interconnect its Generating Facility (and no other facility) to the Shared Facilities. Except as otherwise agreed to by the Co-Tenants, all Shared Facilities and Rights Agreements and Governmental Approvals for the Shared Facilities and Rights shall be in the name of both Co-Tenants.

(b) In no event shall any Co-Tenant's use of the Shared Facilities and Rights or operation of its Generating Facility interfere with the use and quiet enjoyment by the other Co-Tenant of such other Co-Tenant's Co-Tenancy Interests in, and rights to use, the Shared Facilities and Rights or such other Co-Tenant's operation of its Generating Facility, except as specifically provided herein or as agreed to by the Co-Tenants. Each of the Co-Tenants shall cooperate in good faith to accommodate the other Co-Tenant's use of the Shared Facilities and Rights for the benefit of such other Co-Tenant's Generating Facility, as contemplated by this Agreement. The Co-Tenants acknowledge and agree that the use of the Shared Facilities and Rights by any Co-Tenant in connection with its Generating Facility, as contemplated herein, will not, separately or in the aggregate, constitute an overburdening of the Shared Facilities and Rights or any part thereof. Neither Co-Tenant shall use or permit the use of the Shared Facilities and Rights in any manner that would create unreasonable waste or nuisance, or that would jeopardize the issuance or maintenance of any insurance policy relating to the Shared Facilities and Rights or any Governmental Approval for the Shared Facilities and Rights or any Generating Facility, or otherwise conduct or cause to be conducted operations with respect to the Shared Facilities or such Co-Tenant's Generating Facility that would have a similar effect on, or otherwise materially damage or interfere with, the Shared Facilities and Rights, unless otherwise agreed to by the Co-Tenants.

4.1.4 Revenue and Energy. Any energy, and revenue attributable to the energy, produced or transmitted by a Generating Facility shall be only for the benefit of the Co-Tenant owing such Generating Facility based on the amount of energy transmitted into the Shared Facilities from such Co-Tenant's Generating Facility, as adjusted for line losses on the Shared Facilities in accordance with this Agreement.

4.1.5 After-Acquired Property and Rights. To the extent practicable, all After-Acquired Shared Facilities and Rights shall be directly acquired and held by the Co-Tenants as tenants-in-common, with each Co-Tenant owning its Co-Tenancy Interest therein. Unless otherwise determined by the Co-Tenants, any Co-Tenant that acquires in its own name, or an Affiliate's name, any After-Acquired Shared Facilities and Rights shall acquire and hold the same subject in all respects to this Agreement, and such Co-Tenant shall transfer and assign an undivided ownership interest therein to the other Co-Tenant equal to such other Co-Tenant's Co-Tenancy Percentage Interest within fifteen (15) days after such acquisition, and do all things necessary or appropriate to register or record on any appropriate register the asset in the names of the Co-Tenants. If such real or personal property, contractual right or other asset is encumbered by Liens (other than Excluded Liens) at the time of such conveyance, such Co-Tenant shall promptly and diligently work to remove such Liens from such property, contractual right or other asset. No Co-Tenant shall acquire an interest in any After-Acquired Shared Facilities and Rights without the consent of the other Co-Tenant (not to be unreasonably withheld, delayed or conditioned).

4.2 Joint Responsibilities of the Co-Tenants. The Co-Tenants shall:

(a) directly enter into or obtain (as co-tenants) all Shared Facilities and Rights Agreements and Governmental Approvals for the development, construction, ownership, operation and maintenance of the Shared Facilities and Rights and directly acquire and own (as co-tenants) all other Shared Facilities and Rights;

(b) timely develop, construct, own, operate, maintain and control their respective Generating Facilities in accordance with all Applicable Laws, Governmental Approvals, Prudent Industry Practices, Shared Facilities and Rights Agreements and their respective Power Purchase Agreements, including the scheduling requirements under the Shared Facilities and Rights Agreements and their respective Power Purchase Agreements, unless the failure to do so does not adversely affect the development, construction, ownership, operation or maintenance of the Shared Facilities and Rights;

(c) use the Shared Facilities and Rights in accordance with all Applicable Laws for the Shared Facilities and Rights, Governmental Approvals for the Shared Facilities and Rights and Shared Facilities and Rights Agreements with respect to their respective Generating Facilities; and

(d) obtain and maintain (as co-tenants) all Governmental Approvals required in connection with their respective use of the Shared Facilities and Rights.

#### 4.3 Manager.

4.3.1 General Responsibilities. The Co-Tenants hereby appoint the Manager to act as their agent with respect to the overall pursuit and management of all aspects of the Shared Facilities and Rights, including day-to-day management and decision-making. The Manager shall have the power to exercise any and all of the rights of the Manager, as set forth herein, and the obligation to perform the services required herein of the Manager. Without limiting the generality of the foregoing sentence, the Manager shall:

(a) pursue and manage the timely development, construction, operation and maintenance of all Shared Facilities and Rights in accordance with all Applicable Laws for the Shared Facilities and Rights, Governmental Approvals for the Shared Facilities and Rights, Prudent Industry Practices, Shared Facilities and Rights Agreements and the LGIA, including the scheduling requirements under the Shared Facilities and Rights Agreements;

(b) pursue and manage the construction of the Shared Facilities in accordance with the final design agreed to by the Co-Tenants, such design to be consistent with any applicable obligations of the Parties under the Shared Facilities and Rights Agreements and the LGIA;

(c) pursue and manage the operation and maintenance of the Shared Facilities and Rights in a reliable manner, in good working order and on a non-discriminatory basis, and, to the extent it does not cause a breach or violation of any Applicable Law, Governmental Approval, Prudent Industry Practice, Shared Facilities and Rights Agreement, the LGIA or any Power Purchase Agreement, in a manner so to maximize each Generating Facility's revenue, which operation and maintenance shall include the performance of repairs in an expeditious manner that minimizes each Generating Facility's downtime and otherwise reduces overall repair costs and damages;

(d) to the extent it does not cause a breach or violation of any Applicable Law, Governmental Approval, Prudent Industry Practice, Shared Facilities and Rights Agreement, the LGIA, any Power Purchase Agreement or Generating Facility

Construction Agreement, pursue and manage the timely development, construction, operation and maintenance of all Shared Facilities and Rights in accordance with the Power Purchase Agreements and Generating Facility Construction Agreements, including the scheduling requirements under the Power Purchase Agreements and Generating Facility Construction Agreements;

(e) coordinate the administrative obligations of the Co-Tenants under the Shared Facilities and Rights Agreements and the Governmental Approvals for the Shared Facilities and Rights, including billing, payments and communications; and

(f) pursue and manage the repair or replacement of Shared Facilities affected by any Event of Loss or Condemnation Action;

provided, however, that, notwithstanding anything in this Agreement to the contrary, the Manager shall have no obligation to, and shall not, construct, operate and/or maintain the Shared Facilities.

4.3.2 Non-Delegable Actions. Notwithstanding anything in Section 4.3.1 to the contrary, the following actions shall require the consent of the Co-Tenants (not to be unreasonably withheld, delayed or conditioned):

(a) the submission of any initial application for any non-ministerial Governmental Approval for the Shared Facilities and Rights, the application for renewal or material modification of any such Governmental Approval or the acceptance of any such Governmental Approval or material modification thereto;

(b) the selection of any major contractor or vendor with respect to the Shared Facilities;

(c) the execution, termination of, material amendment to, issuance of a material change order under, or waiver of a material provision of any Shared Facilities and Rights Agreement or the exercise of remedies under any Shared Facilities and Rights Agreement;

(d) the adoption of, and modifications to, any Budget;

(e) the initiation of any litigation, arbitration or other dispute resolution mechanism relating to the Shared Facilities and Rights under any Shared Facilities and Rights Agreement or otherwise or the settlement of any of the foregoing or any insurance or warranty claim relating to the Shared Facilities and Rights;

(f) the disposition of any Shared Facilities and Rights (other than dispositions in the ordinary course of business of surplus or obsolete assets having a value of less than One Hundred Thousand U.S. Dollars (\$100,000) or in connection with a transfer of all of a Co-Tenant's rights in its Generating Facility);

(g) the acquisition of insurance for the Shared Facilities and any modifications thereto;

(h) the determination to commence the wind-up of the Shared Facilities and Rights; and

(i) the issuance of a notice to proceed or any completion or similar certificate or the acceptance of any performance tests under the Shared Facilities Construction Agreement;

4.3.3 Indemnity. Each Co-Tenant shall, pro rata in accordance with its Co-Tenancy Percentage Interest, indemnify, defend and hold harmless the Manager and its Affiliates, and their agents and representatives (collectively, the “**Manager Parties**”), against any and all Claims arising out of or relating to any act performed or omitted to be performed by the Manager in its reasonable judgment, in good faith, or in reasonable reliance upon the advice of the Manager’s attorneys or accountants, in connection with this Agreement (except for any such Claim arising out of acts or omissions constituting a material breach by the Manager of this Agreement or to the extent any such Claim arises out of the fraud, willful misconduct, or gross negligence of any Manager Party).

4.3.4 Replacement. Upon the written approval of both Co-Tenants, the Co-Tenants may replace the Manager with any Person of their choosing; provided, however, that any Co-Tenant (acting by itself) may remove the Manager if the Manager is in material default of its obligations hereunder. If a Co-Tenant (acting by itself) removes the Manager as a result of such a material default, the Co-Tenants shall jointly appoint a new Manager.

4.3.5 Fees and Expenses. The Co-Tenants shall reimburse the Manager in proportion to their respective Co-Tenancy Percentage Interests for all reasonable out-of-pocket and overhead expenses incurred by the Manager pursuant to this Agreement and the Parties shall agree upon and establish procedures for such reimbursement.

4.3.6 Performance; Non-Discrimination. The Manager shall exercise its rights and perform its obligations hereunder in accordance with Prudent Industry Practices and all Applicable Laws. In addition, notwithstanding anything in this Agreement to the contrary, the Manager shall not Discriminate in exercising its rights or performing its obligations hereunder. As used herein, “**Discriminate**” means a failure by the Manager to provide services or otherwise perform its obligations hereunder in a manner that treats alike each of the Co-Tenants under substantially similar conditions, and for which dissimilar treatment is not otherwise justified as necessary in accordance with Prudent Industry Practices and Applicable Laws.

#### 4.4 Books and Records; Access.

4.4.1 Books and Records. The Manager shall keep proper books, records and other documents with respect to the Shared Facilities and Rights and make such books, records and other documents reasonably available to the Co-Tenants for inspection or audit.

4.4.2 Access. Subject to Sections 4.1.3(b) and 4.10 and any non-disturbance agreement executed by the Parties pursuant to Section 4.10, each of Desert 250 and Desert 300 shall (a) have physical access to the Shared Facilities to the extent that such access



does not unreasonably interfere with the Shared Facilities and Rights, subject to reasonable safety and security requirements of which such Co-Tenant has been provided advance written notice, including any safety and security requirements set forth in the Shared Facilities O&M Agreement, (b) have the independent right to (i) monitor and inspect the development, construction, operation, maintenance and use of the Shared Facilities and Rights and (ii) review and comment on draft copies of Shared Facilities and Rights Agreements and Governmental Approvals for the Shared Facilities and Rights and (c) be provided copies by the other Co-Tenant and/or the Manager of all Governmental Approvals for the Shared Facilities and Rights (including applications therefor), Shared Facilities and Rights Agreements (including drafts thereof), material communications regarding the Shared Facilities and Rights and all information related to land rights, expected development, construction, operation, maintenance or use costs, constructability, creditworthiness, records, operating data, accounts, copies of studies, reports and data and any other information regarding the Shared Facilities and Rights, in each case, as reasonably requested by such Co-Tenant.

#### 4.5 Notification and Emergencies.

(a) Each Co-Tenant shall promptly notify the other Parties of any known Emergency (and any action taken pursuant thereto), force majeure or default under any Shared Facilities and Rights Agreement or the LGIA, violation under any Applicable Law or Governmental Approval, other material event, planned maintenance or repair on the Shared Facilities or any other situation or condition that could reasonably be expected to prompt an interruption, reduction or curtailment of, or have a material adverse effect on, the Shared Facilities and Rights or the LGIA.

(b) Notwithstanding anything in this Agreement to the contrary, during an Emergency, any Party may take any action reasonably prudent or necessary to (i) preserve public health and safety, (ii) limit or prevent damage to the Shared Facilities and Rights, the Generating Facilities or other property or persons and (iii) discharge its duties or obligations under the LGIA; provided that such actions are made in good faith and are consistent with Prudent Industry Practice or in accordance with the LGIA and such Party uses reasonable efforts to minimize the adverse effect of such actions on the Shared Facilities and Rights, the LGIA and the Generating Facilities.

#### 4.6 Metering and Line Losses.

(a) Each of Desert 250 and Desert 300 shall arrange for retail metering of its Generating Facility in accordance with the applicable retail rate schedule. Each of Desert 250 and Desert 300 shall arrange for wholesale metering of its Generating Facility in accordance with the LGIA, the CAISO Side Letter and the CAISO tariff. Each of Desert 250 and Desert 300 shall have a revenue meter connected to record and allocate costs for station usage by its Generating Facility. The meter readings shall be adjusted to account for transformer and transmission line losses.

(b) Any line losses occurring between the switchyard for the Generating Facilities and the Point of Interconnection will be addressed in accordance with the CAISO tariff.

(c) Upon request of a Party, the other Party shall provide CAISO meter data for the purposes of calculating line losses in connection with the Generating Facilities.

4.7 Modifications. Upon the request of either Desert 250 or Desert 300 (the “**Requesting Party**”), the Manager shall timely undertake and complete any upgrades, modifications and expansions of the Shared Facilities and Rights (a “**Modification**”); provided that (a) no Modification shall be undertaken without the consent of the non-Requesting Party (not to be unreasonably withheld, delayed or conditioned) and (b) no Modification shall cause a breach or violation of any Applicable Law, Governmental Approval, Prudent Industry Practice, Shared Facilities and Rights Agreement or the LGIA. Desert 250 and Desert 300 shall have the right to benefit from, use and access such Modification and, subject to Sections 6.1.2 and 7.1, shall be responsible for all costs and liabilities in connection therewith in proportion to their respective Co-Tenancy Percentage Interests.

#### 4.8 Curtailement.

4.8.1 Curtailement; Allocation. At the direction of the Manager, the Co-Tenants shall promptly curtail deliveries of energy to or on the Shared Facilities (a) when necessary in order maintain or repair any part of the Shared Facilities, (b) if necessary for safety or Emergencies or the energy delivered to, or transmitting on, the Shared Facilities does not conform to this Agreement or jeopardizes the integrity or use of the Shared Facilities, (c) if required pursuant to, or to comply with, the LGIA, the LGIA Co-Tenancy Agreement or the CAISO tariff, (d) if it or any Co-Tenant is otherwise required to do so in accordance with any applicable requirements of the organization certified by FERC to propose and enforce mandatory standards for the reliable operation and planning of the bulk power system throughout the United States of America, (e) if the Co-Tenants’ rights under the LGIA, the LGIA Co-Tenancy Agreement or CAISO tariff are curtailed and (f) as otherwise agreed to by the Co-Tenants. In the event of any curtailment of the deliveries of energy to or on the Shared Facilities at the direction of the CAISO or Participating TO, the Co-Tenants shall limit the length of such curtailment to that time reasonably necessary to address the event or circumstance resulting in such interruption, reduction or curtailment or otherwise to comply with the LGIA, LGIA Co-Tenancy Agreement and CAISO tariff. Any such curtailment shall be allocated pro rata among the Co-Tenants according to each Co-Tenant’s Co-Tenancy Percentage Interest; provided, however, that the Manager may direct curtail on a non-pro rata basis if (x) with respect to any curtailment of an amount less than five megawatts and for a limited duration not to exceed six hours, the Manager reasonably determines that non-pro rata allocation of such curtailment is necessary with respect to the prudent operation of the Shared Facilities (so long as the Manager does not select one Generating Facility more often than the other Generating Facility in allocation of any such curtailment), (y) such allocation is necessary to comply with the LGIA or the LGIA Co-Tenancy Agreement or CAISO or Participating TO direction, and, in each case, that such non-pro rata allocation will not result in a default under the LGIA, or (z) such curtailment is caused by or otherwise can be attributed to Desert 250 or Desert 300 individually (including any instruction from CAISO or Participating TO identifying a specific Generating Facility that is required to interrupt, reduce, or curtail output).

4.8.2 Excess Usage. If any Co-Tenant is using the Shared Facilities and Rights in excess of its rights under this Agreement, then such Co-Tenant shall cause such excess usage to be reduced, interrupted and curtailed.

4.8.3 LGIA Co-Tenancy Agreement. In the event of a conflict between this Section 4.8 and Section 2.4 of the LGIA Co-Tenancy Agreement, Section 2.4 of the LGIA Co-Tenancy Agreement shall prevail.

4.9 Liens. Neither Co-Tenant shall create or permit to exist any Lien (other than an Excluded Lien) on its Co-Tenancy Interests without the consent of the other Co-Tenant. Neither Co-Tenant shall create or cause to exist any Lien on the other Co-Tenant's Generating Facility or Co-Tenancy Interests; provided, however, that any Co-Tenant may obtain a judgment Lien against the other Co-Tenant based on such other Co-Tenant's breach under this Agreement or otherwise permitted at law or in equity not specifically prevented by this Agreement.

4.10 Non-Disturbance. As a condition to a Co-Tenant granting any Lien to a Person over any of such Co-Tenant's Co-Tenancy Interest in any part of the Shared Facilities and Rights, the Shared Premises, the LGIA or either Generating Facility, such Co-Tenant shall cause such Person (or its agent) to enter into and maintain in full force and effect a (x) consent to collateral assignment agreement and (y) non-disturbance agreement with the other Co-Tenant's Lenders and the other Parties, in form and substance reasonably acceptable to such Lenders and other Parties, containing non-disturbance provisions protecting such other Parties' rights under this Agreement and the LGIA Co-Tenancy Agreement (collectively, the "**Designated Agreements**"), which will include an agreement by such Person that (a) the rights of such other Parties and the counterparties under the Designated Agreements, as applicable, shall not be affected or disturbed by such Person in the exercise of any of its rights under any financing or security agreement and such Person shall agree not to take any action or request a remedy that would terminate any Designated Agreement or impair rights thereunder, (b) if such Person forecloses on, takes title to, or transfers any interest in, the Shared Facilities and Rights, the Shared Premises, the LGIA or a Generating Facility, each Designated Agreement shall continue in effect and shall not be terminated and such Person (or transferee of such Person's rights) shall assume and become bound to perform all of such Co-Tenant's obligations under the Designated Agreements arising after such foreclosure, taking of title or transfer and shall take title to all of such Co-Tenant's Co-Tenancy Interest in the Shared Facilities and Rights, the Shared Premises, the LGIA and the applicable Generating Facility and (c) if such Person forecloses on, takes title to, or transfers any interest in, the Shared Facilities and Rights, the Shared Premises, the LGIA or a Generating Facility and this Agreement or the LGIA Co-Tenancy Agreement is not in full force and effect, as the result of bankruptcy or other event (other than as provided in Section 2.1), then, at the request of a Party made within forty-five (45) days after such event, such Person (or transferee of such Person's rights) shall enter into an agreement on the same terms as this Agreement and the LGIA Co-Tenancy Agreement, as applicable.

4.11 Insurance. The Co-Tenants shall maintain or cause to be maintained insurance for the Shared Facilities of types, in amounts and with deductibles in accordance with their respective obligations under Section 5.3(d)(i) of the Desert 250 Master Agreement and Section 5.3(d)(i) of the Desert 300 Master Agreement.

4.12 Cooperation. The Co-Tenants shall coordinate and cooperate in good faith to facilitate (a) the joint benefit and use of, and access to, the Shared Facilities and Rights by Desert 250 and Desert 300 and (b) the effective and cost-efficient development, construction, operation, maintenance and use of the Shared Facilities and Rights, in each case, in a manner consistent with this Agreement. Each Co-Tenant shall provide the other Co-Tenant with reasonable access to the project site on which its Generating Facility or Shared Facilities, as applicable, are located so that each Co-Tenant's contractors and vendors can perform its obligations under any construction, operation or maintenance agreement for a Generating Facility or the Shared Facilities, as applicable.

4.13 Ancillary Services. No Co-Tenant shall be required to provide to the other Co-Tenant any services that are necessary to support the transmission of capacity and energy from resources to loads, including scheduling, system control and dispatch service, reactive supply and voltage control, regulation and frequency response, energy imbalance, generator imbalance, operating reserve-spinning, operating reserve-supplemental or loss compensation.

4.14 Wind-Up. On the wind-up of the Shared Facilities and Rights, the Co-Tenants shall promptly perform the following actions: (a) dismantle, demolish and remove the Shared Facilities, (b) terminate any Shared Facilities and Rights Agreements in accordance with their respective terms, (c) secure, maintain and dispose of debris with respect to the Shared Facilities, (d) perform any activities necessary to comply with Applicable Law and Prudent Industry Practices and that are otherwise prudent to retire the Shared Facilities and Rights and protect the Parties from liability, (e) remedy and restore the Shared Premises and (f) timely dispose of the Shared Facilities and Rights by sale, auction or otherwise.

4.15 Third-Party Usage. The Co-Tenants acknowledge and agree that the Co-Tenants may be required to file an open access transmission tariff (the "**Desert Tariff**"), and allow third parties to use all or certain portions of the Shared Facilities (a "**Third-Party User**"), pursuant to Applicable Law. Except as agreed to by the Co-Tenants, the Co-Tenants shall use reasonable efforts to make filings and take such other action so that Desert 250 and Desert 300 have priority rights to the first 550 MW of capacity on the Shared Facilities (plus any additional amount of capacity, as agreed to by the Co-Tenants, to account for line losses). Notwithstanding anything in Section 6.1 or 7.1 to the contrary, (x) the Co-Tenants shall allocate the costs and liabilities contemplated by Section 6.1 between Desert 250 and Desert 300, on the one hand, and any Third-Party User, on the other hand, based on such Third-Party User's capacity rights on the applicable Shared Facilities relative to Desert 250's and Desert 300's capacity rights on the Shared Facilities and (y) neither Desert 250 nor Desert 300 shall be responsible for any cost or liability contemplated by Section 6.1.2 applicable to any Third-Party User or any incremental costs attributable to any Third-Party User's use of the Shared Facilities.

4.16 Other Joint Uses. If the Co-Tenants are parties to any agreement for the development, construction, ownership, operation or maintenance of the Project (other than the Shared Facilities and Rights Agreements) or jointly hold an ownership interest in any Governmental Approval (other than Governmental Approvals for the Shared Facilities and Rights), then, unless otherwise agreed to by the Co-Tenants, the Manager shall coordinate the administrative obligations of the Co-Tenants thereunder and otherwise act as their agent with respect thereto. The Co-Tenants shall coordinate and cooperate in good faith to allocate their

rights and obligations under such agreements and Governmental Approvals in a manner consistent with their respective Co-Tenancy Percentage Interests. Unless otherwise agreed to by the Co-Tenants, all costs and liabilities in connection with such agreements and Governmental Approvals shall be the responsibility of Desert 250 and Desert 300 in proportion to their respective Co-Tenancy Percentage Interests (subject to the exceptions provided in Section 6.1.2, which shall apply *mutatis mutandis* to such costs and liabilities), and the Manager shall have the right to administer the collection and payment of all amounts due thereunder in a manner consistent with Section 6.2 (it being understood and agreed that the right of Contribution provided in Section 6.3 shall apply *mutatis mutandis* to such amounts due).

## **5. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Parties that as of the Effective Date:

5.1 Organization and Good Standing. It is duly organized and validly existing under the laws of Delaware, is duly qualified to transact business and is in good standing under the laws of Delaware and in any other jurisdiction in which the failure to so qualify reasonably could be expected to result in a material adverse effect.

5.2 Authorization; Enforceability. It has the requisite limited liability company power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. Its execution and delivery of this Agreement and consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary limited liability company action. This Agreement constitutes a valid and binding obligation of it (assuming due execution and delivery by each other Party), enforceable against it in accordance with the terms of this Agreement, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application from time to time in effect that affect creditors' rights generally or (b) general principles of equity.

5.3 No Violation; Consents. Its execution and delivery of this Agreement and consummation of the transactions contemplated by this Agreement do not violate any of its organization documents or any material agreement or instrument applicable to or binding upon it or any material Applicable Law. To its knowledge, except as provided for in Article 3, it is not required to seek any approval or waiver from a Government Authority in connection with its execution or delivery of this Agreement or its compliance with or performance of any provision contained in this Agreement, other than Governmental Approvals for the development, construction, use, operation or maintenance of the Generating Facilities or the Shared Facilities and Rights, as applicable.

5.4 Litigation. There is no Claim pending against it that could reasonably be expected to have, individually or in the aggregate, a material adverse effect on its ability to consummate the transactions contemplated by this Agreement and, to its knowledge, there is no such Claim threatened against it.

## **6. PAYMENT**

6.1 Cost Sharing.

6.1.1 Joint Sharing Costs. Subject to Sections 4.15, 6.1.2 and 7.1, all costs and liabilities in connection with the Shared Facilities and Rights shall be the responsibility of Desert 250 and Desert 300 in proportion to their respective Co-Tenancy Percentage Interests, including development, construction, operation and maintenance costs and liabilities, indirect and overhead costs, property and other taxes, insurance costs, metering charges and costs to wind-up in accordance with Section 4.14, in each case, in connection with the Shared Facilities and Rights.

6.1.2 Sole Responsibility Costs. Subject to Section 7.1, each Co-Tenant shall be solely responsible for any:

(a) penalties, damages, charges or other amounts paid or incurred in respect of imbalances or outages that arise out of such Co-Tenant's use of, or interconnection with, the Shared Facilities and Rights;

(b) penalties, damages, charges or other amounts paid or incurred in respect of such Co-Tenant's breach of any Shared Facilities and Rights Agreement or Governmental Approval for the Shared Facilities and Rights;

(c) costs as otherwise agreed to by Desert 250 and Desert 300;

(d) costs based on the actual energy produced, transmitted or consumed by such Co-Tenant's Generating Facility;

(e) costs attributable to the development, construction, operation or maintenance of, or scheduling energy from, such Co-Tenant's Generating Facility; and

(f) any franchise or income taxes that are assessed or imposed against such Co-Tenant.

6.1.3 Proceeds. Subject to Sections 4.1.4 and 4.15, all insurance proceeds from insurance maintained pursuant to Section 4.11, condemnation awards, proceeds from the disposition of assets (other than a transfer of Co-Tenancy Interests), liquidated damage payments and other payments, credits and refunds received by a Party in connection with the Shared Facilities and Rights (including under any Shared Facilities and Rights Agreement) shall be shared by Desert 250 and Desert 300 in proportion to their respective Co-Tenancy Percentage Interests; provided, however, that, to the extent such insurance or any applicable Shared Facilities and Rights are paid for solely by Desert 250 or Desert 300 pursuant to Section 6.1.2, such Co-Tenant shall be entitled to all such proceeds, awards, payments, credits and refunds.

## 6.2 Payments and Invoice.

6.2.1 Payments. The Manager shall administer the collection and payment of all amounts due under the Shared Facilities and Rights Agreements. Except as otherwise provided in Section 6.1.2, each Co-Tenant shall pay its Co-Tenancy Percentage Interest of such amounts to the Manager promptly upon receipt of written notice thereof from the Manager, but in any event no later than the earlier of (a) thirty (30) days after such receipt and

(b) five (5) days before the date such amount is due under the applicable Shared Facilities and Rights Agreement.

6.2.2 Budget. Upon request of a Co-Tenant, the Manager shall promptly develop a budget for costs and liabilities associated with the Shared Facilities and Rights (a “**Budget**”), in which case, the Parties shall use reasonable efforts to incur such costs and liabilities in accordance with such Budget. Such Budget shall be promptly revised by the Manager to account for any changes to the expected costs and liabilities associated with the Shared Facilities and Rights.

6.3 Contribution. If a Co-Tenant fails to pay the full amount of any payments when required to do so pursuant to Section 6.2 (each, a “**Contribution**” and such Co-Tenant, the “**Non-Contributing Party**”), the Manager or the other Co-Tenant (the “**Contributing Party**”) shall have the right, but not the obligation, to make an advance (an “**Advance**”) on behalf of the Non-Contributing Party in respect of the unpaid Contribution of the Non-Contributing Party (the “**Unpaid Contribution**”). Advances shall be repaid (with interest at the Interest Rate from the date such Advance was made until the date such Advance is fully repaid) by the Non-Contributing Party at any time after the date the Advance is made upon written demand therefor by the Contributing Party. Each Advance shall be an obligation of the Non-Contributing Party to the Contributing Party and the Contributing Party may enforce and recover from the Non-Contributing Party the Advance in accordance with any of its remedies hereunder or at law or in equity not specifically prevented by this Agreement. The election by a Co-Tenant to make or not to make an Advance in respect of an Unpaid Contribution shall not operate as waiver of the rights of such Co-Tenant under this Agreement or at law or in equity.

6.4 Setoff. Each Party shall have the right to setoff any amount owed to it by any other Party against any amounts owed by it to such other Party.

6.5 Interest. Each overdue and disputed amount and refund of, and credit for, overpayment shall bear interest from the due date or the date of overpayment, as applicable, to the date of payment of such amount, refund or credit, as applicable, at the Interest Rate.

6.6 Payment Mechanism. Unless otherwise agreed to by the Parties, any payment hereunder shall be made by wire or electronic transfer of immediately available funds in accordance with the instructions provided by the Party receiving any such payment. If any payment hereunder is required to be made on a day other than a Business Day, the due date for such payment shall be extended to the next Business Day.

## 7. INDEMNIFICATION; LIABILITY

### 7.1 Indemnities.

7.1.1 Desert 250 Indemnities. Desert 250 shall indemnify, defend and hold harmless:

(a) Desert 300 and its Affiliates, and their respective agents and representatives (collectively, the “**Desert 300 Parties**”), against any and all Claims arising out of or relating to any breach of this Agreement by Desert 250, or act or omission of Desert 250 or its

Affiliates, or their respective agents and representatives (collectively, the “**Desert 250 Parties**”), except to the extent any such Claim arises out of the negligence or willful misconduct of any Desert 300 Party; and

(b) subject to Sections 4.16, 6.1.2 and 7.1.2(a), the Desert 300 Parties against any and all Claims arising out of or relating to this Agreement or the Shared Facilities and Rights to the extent that the Desert 300 Parties collectively and proportionally bear any such Claims in excess of Desert 300’s Co-Tenancy Percentage Interest, so that the Desert 250 Parties and the Desert 300 Parties bear all such Claims in proportion to the Co-Tenancy Percentage Interests of Desert 250 and Desert 300, respectively.

7.1.2 Desert 300 Indemnities. Desert 300 shall indemnify, defend and hold harmless:

(a) The Desert 250 Parties against any and all Claims arising out of or relating to any breach of this Agreement by Desert 300 or act or omission of any Desert 300 Party, except to the extent any such Claim arises out of the negligence or willful misconduct of any Desert 250 Party; and

(b) subject to Sections 4.16, 6.1.2 and 7.1.1(a), the Desert 250 Parties against any and all Claims arising out of or relating to this Agreement or the Shared Facilities and Rights to the extent that the Desert 250 Parties collectively and proportionally bear any such Claims in excess of Desert 250’s Co-Tenancy Percentage Interest, so that the Desert 250 Parties and the Desert 300 Parties bear all such Claims in proportion to the Co-Tenancy Percentage Interests of Desert 250 and Desert 300, respectively.

7.2 Waiver of Consequential Damages. **EXCEPT FOR AMOUNTS FOR WHICH A PARTY IS RESPONSIBLE UNDER SECTION 4.16 OR SECTION 6.1.2 OR FOR DAMAGES PAID TO THIRD PERSONS TO WHICH AN INDEMNITY UNDER SECTION 7.1 APPLIES, IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, STATUTE, TORT, STRICT LIABILITY OR OTHERWISE, SHALL ANY PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE SHARED FACILITIES AND RIGHTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COSTS IN EXCESS OF ESTIMATES, COST OF PURCHASED POWER OR TRANSMISSION, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS OR CLAIMS OF CUSTOMERS OR LENDERS. THE LIMITATIONS BY THIS SECTION 7.2 IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY.**

7.3 No Warranties. **EXCEPT AS PROVIDED IN ARTICLE 5, NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY SHALL APPLY IN CONNECTION WITH A PARTY’S PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. IT IS UNDERSTOOD AND**



**AGREED THAT NO PARTY IS GUARANTEEING OR UNDERTAKING TO PROCURE ANY FINANCIAL OR OTHER OUTCOME WITH RESPECT TO THE SHARED FACILITIES AND RIGHTS.**

## **8. FORCE MAJEURE AND EXCUSE**

8.1 Excuse. Subject to Section 8.2, no Party shall be in default with respect to any obligation under this Agreement (other than the obligation to pay money when due) if prevented from fulfilling such obligation by Force Majeure; provided that such Party (a) delivers notice and the full particulars of such Force Majeure to the other Parties as soon as reasonably possible after the occurrence thereof, including the time and date when the Force Majeure occurred and when the effects of the Force Majeure are reasonably expected to cease and (b) exercises due diligence to remove the effects of such Force Majeure with reasonable dispatch; provided, however, that such Party shall not be required to accede or agree to any provision not satisfactory to it in order to settle or terminate a strike or other labor disturbance. The suspension of performance due to a Force Majeure shall be of no greater scope and of no longer duration than is required by such Force Majeure.

8.2 Exception. No Party shall be excused from any of its obligations under this Agreement as a result of Force Majeure to the extent that the Parties are unable to declare or maintain Force Majeure under any Shared Facilities and Rights Agreement and the LGIA.

8.3 Excuse. No Party shall be in breach of this Agreement as a result of any other Party's failure to perform any of its obligation under this Agreement.

## **9. DEFAULT; REMEDIES**

9.1 Default. Subject to Section 4.10 and any non-disturbance agreement executed by the Parties pursuant thereto, and except as provided in Article 8, an event of default (an "**Event of Default**") shall be deemed to have occurred with respect to a Party (the "**Defaulting Party**") upon the occurrence of one or more of the following events:

9.1.1 Payment. Failure of such Party to pay any undisputed amount due under this Agreement within the later of (a) forty-five (45) days after the date on which such amount becomes due and (b) three (3) Business Days after receipt of notice of the failure to pay is provided to such Party;

9.1.2 General Breach. Failure of such Party to comply in any material respect with any obligation (not otherwise addressed by this Section 9.1) imposed upon it by this Agreement where such failure is not remedied within thirty (30) days after notice thereof is provided to such Party or such longer period if the failure to perform is not susceptible to cure within such thirty (30)-day period and such Party diligently pursues the cure of such failure to completion within such additional period as may be reasonably required to cure such failure to perform; provided, however, that such default, if not cured within ninety (90) days after such notice is provided to such Party, shall constitute an Event of Default;

9.1.3 Representations. Such Party breaches a representation or warranty it has made hereunder in any material respect and such breach is not remedied within thirty (30) days after notice thereof is provided to such Party;

9.1.4 Non-Disturbance. Any breach of Section 4.1.3(b) or 4.10 or any non-disturbance agreement executed by the Parties pursuant to Section 4.10;

9.1.5 Liens. With respect to any Co-Tenant, such Co-Tenant breaches its obligations under Section 4.9 and such breach is not remedied within fifteen (15) days after notice thereof is provided to such Co-Tenant; and

9.1.6 Bankruptcy. The occurrence of a Bankruptcy Event with respect to such Party.

Notwithstanding anything in this Section 9.1 to the contrary, if a breach of this Agreement by a Party would cause the Parties to be in breach of a Shared Facilities and Rights Agreement, the LGIA or the LGIA Co-Tenancy Agreement, any notice or cure period provided in this Section 9.1 shall be equal to the lesser of (a) the notice or cure period provided in this Section 9.1 for such breach and (b) the notice or cure period provided in such Shared Facilities and Rights Agreement, the LGIA, or the LGIA Co-Tenancy Agreement, as applicable. For purposes of this Agreement and the LGIA Co-Tenancy Agreement, an “Event of Default” under the LGIA Co-Tenancy Agreement shall be an Event of Default hereunder and an Event of Default hereunder shall be an “Event of Default” under the LGIA Co-Tenancy Agreement, and, for purposes of Section 9.2.3, a payment default that has resulted in an “Event of Default” under the LGIA Co-Tenancy Agreement shall be an Event of Default under Section 9.1.1.

## 9.2 Remedies.

9.2.1 Cumulative Remedies. Subject to Section 2.1, if an Event of Default occurs, each Non-Defaulting Party shall be entitled to all legal and equitable remedies at law or in equity not expressly prohibited by the terms of this Agreement.

9.2.2 Specific Performance. Each Party acknowledges and agrees that the failure to perform any of its obligations under this Agreement would cause irreparable harm to the other Parties and that the remedy at law for any violation or threatened violation thereof would be inadequate, and further agrees that the other Parties shall be entitled to a temporary or permanent injunction, specific performance or other equitable relief specifically to enforce such obligations without the necessity of proving the inadequacy of its legal remedies. No Party shall be required to post any guaranty, letter of credit, bond or other security to obtain an order or decree of temporary or permanent injunction, specific performance or other equitable relief.

9.2.3 Loss of Right to Shared Facilities and Rights. If an Event of Default occurs under Section 9.1.1, then, without limiting any other rights that any Non-Defaulting Party might otherwise have, upon notice to the Defaulting Party delivered while such Event of Default remains outstanding, (a) any Non-Defaulting Party may curtail such Defaulting Party’s benefit or use of, or access to, the Shared Facilities and Rights and (b) if a Co-Tenant is a Non-Defaulting Party, such Co-Tenant may receive all or any part of the Defaulting Party’s rights under this Agreement to benefit, use and access the Shared Facilities and Rights (or, if not

practicable due to regulatory requirements or the rights of third Persons, the Defaulting Party shall promptly pay over to such Co-Tenant all proceeds from its benefit, use and access of the Shared Facilities and Rights) until such time as such Non-Defaulting Party has received an amount equal to the payment default plus interest at the Interest Rate.

9.2.4 Cure Rights. If an Event of Default has occurred that could reasonably be expected to have a material adverse effect on the Shared Facilities and Rights or under Section 9.1.5, then, without limiting any other rights that the Non-Defaulting Party might have, upon notice to the Defaulting Party delivered while such Event of Default remains outstanding, each Non-Defaulting Party may cure such Event of Default at the Defaulting Party's expense; provided, however, that no Party shall have the right to make any modification to any Generating Facility that is not owned by such Party.

## 10. GENERAL

### 10.1 Disputes.

10.1.1 Notice; Referral. In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement, such Party (the "**Disputing Party**") shall provide the other Parties with written notice of the dispute or claim ("**Notice of Dispute**"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the Parties. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) days of the other Parties' receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree within such thirty (30)-day period to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

10.1.2 Arbitration Rules. Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. The arbitrator shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**Arbitration Rules**") and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 10.1, the terms of this Section 10.1 shall prevail.

10.1.3 Arbitration. Unless otherwise agreed to by the Parties, the arbitrator shall render a decision within ninety (90) days after appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court

having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service the Interconnection Customer's Interconnection Facilities.

10.1.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and each Co-Tenant shall be responsible for such Co-Tenant's Co-Tenancy Percentage Interest of the cost of the arbitrator chosen, if applicable.

10.1.5 Federal Power Act. Except as provided in Section 10.17, nothing in this Agreement or the LGIA Co-Tenancy Agreement shall abrogate or otherwise limit a Party's right to exercise any rights it may have under the Federal Power Act; provided, however, that, except in an Emergency, a Party shall not exercise its rights under the Federal Power Act until thirty (30) days after receipt of the applicable Notice of Dispute; provided, further, however, that, in the event that a dispute or claim or a material issue related to a dispute or claim subject to this Section 10.1 or Section 2.16 of the LGIA Co-Tenancy Agreement is the subject of a proceeding under the Federal Power Act, any Party may elect to stay any consideration thereof until such proceeding is concluded.

## 10.2 Assignment Restrictions.

10.2.1 Assignment. Except as provided in Section 10.2.2 or 10.2.4, no Party shall assign its rights or obligations under this Agreement and no Co-Tenant shall assign its Co-Tenancy Interests; provided, however, that such Party shall assign (such assignment not requiring consent of a Party) all of its rights under this Agreement and all of its Co-Tenancy Interests to a transferee of all of such Party's rights in its Generating Facility (in which case such transferee shall be assigned and assume the transferring Party's entire interest in both this Agreement and Co-Tenancy Interests, pursuant to an agreement reasonably satisfactory to the other Party).

10.2.2 Financing; Right to Encumber. Notwithstanding anything in this Section 10.2 to the contrary and in addition to the rights and obligations of any Party set forth in any consent to assignment but subject to Section 4.10, each of Desert 250 and Desert 300 shall have the right to assign to its Lenders any of its rights and obligations under this Agreement and any of its Co-Tenancy Interests, in each case, without consent, only for collateral security purposes to aid in providing financing for such Co-Tenant's Generating Facility and Co-Tenancy Interest in the Shared Facilities and Rights. At the requesting Co-Tenant's cost, the other Co-Tenant and the Manager each agrees to execute and deliver to and in favor of the Lenders a consent to assignment and such other documents customary for project finance transactions and reasonably requested by such Lenders and reasonably acceptable to the Parties.

10.2.3 Void. Any assignment in contravention of this Section 10.2 shall be null and void.

10.2.4 Subcontracts. Notwithstanding anything in this Section 10.2 to the contrary, a Party may enter into subcontracts to perform its obligations under this Agreement, but such Party shall not be relieved of any obligation hereunder.

10.3 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by telecopy to the Party or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Party's address, as appropriate, which is set forth below or to such other address as a Party shall advise the other Parties from time to time in writing.

If to Desert 250: c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Business Manager

If to Desert 300: c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Business Manager

If to the Manager: c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Business Manager

10.4 Survival. The following shall survive expiration of the Term: (a) all obligations under this Agreement owed to a Party arising prior to or resulting from the expiration of, or on account of the breach of, this Agreement; (b) Sections 4.3.3 and 7.1, which shall survive to the full extent of the statute of limitations period applicable to any Claim, (c) the resolution of any dispute or claim submitted pursuant to this Agreement prior to, or resulting from, the expiration of the Term; and (d) Articles 1, 9 and 10 (other than Sections 10.16(a) and 10.18) and Sections 6.1.3, 7.2 and 7.3.

10.5 Waivers. No (a) failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, (b) partial exercise by a Party of any of its rights under this Agreement or (c) course of dealing among the Parties shall constitute a waiver of the rights of any Party under this Agreement. Any waiver of rights shall be effective only by a written instrument signed by the Party granting any such waiver, and such instrument shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply herewith.

10.6 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. Except as otherwise agreed to by the Parties or expressly provided herein, no Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. THE PARTIES SHALL NOT BE CONSIDERED FIDUCIARIES IN CONNECTION WITH THIS AGREEMENT OR THE LGIA CO-TENANCY AGREEMENT, BUT RATHER SHALL BE FREE TO ACT ON AN ARM'S-LENGTH BASIS IN ACCORDANCE WITH THEIR OWN RESPECTIVE SELF-INTERESTS, SUBJECT, HOWEVER, TO THE OBLIGATIONS OF THE PARTIES TO ACT IN GOOD FAITH IN THEIR DEALINGS WITH EACH OTHER WITH RESPECT TO ACTIVITIES HEREUNDER AND THE LGIA CO-TENANCY AGREEMENT. Neither Co-Tenant nor any Affiliate of either Co-Tenant shall be precluded from engaging in any activities, including activities similar or identical to those to be conducted by the other Co-Tenant, in respect of its Generating Facility, the Shared Facilities and Rights or the LGIA or any activities incidental or related thereto, in each case, except as provided in this Agreement or as agreed to by the Co-Tenants.

10.7 Headings. The captions of the Articles and Sections of this Agreement are solely for convenience and shall not be deemed a part of this Agreement for the purpose of construing the meaning of this Agreement or for any other purpose.

10.8 Governing Law. This Agreement and the rights of the Parties hereunder shall be construed in accordance with the laws of the State of California to the extent not governed by the Federal Power Act, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws that require the application of another jurisdiction's laws. Notwithstanding the foregoing sentence but except as provided in Section 10.17, nothing in this Agreement shall be construed as limiting the Parties' rights and remedies under the Federal Power Act.

10.9 Severability. The invalidity or enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted, and in lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

10.10 Entire Agreement. This Agreement is the entire agreement and understanding among the Parties in respect of the subject matter hereof and supersedes all prior negotiations, understandings and writings among the Parties with respect to the subject matter hereof. This Agreement shall not be construed in any manner to amend or otherwise modify the LGIA or the LGIA Co-Tenancy Agreement or any other Shared Facilities and Rights Agreement.

10.11 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

10.12 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of all the Parties and their respective successors and permitted assigns.

10.13 Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement.

10.14 Joint Preparation. This Agreement shall be considered for all purposes as having been prepared through the joint efforts of the Parties and shall not be construed against any Party as a result of the preparation, substitution, submission or other event of the negotiation, drafting or execution of this Agreement.

10.15 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

10.16 Running with the Land; Survival of Rights; Memorandum.

(a) The Shared Facilities and Rights and the Shared Premises shall be held, conveyed, assigned, hypothecated, encumbered, used and occupied, subject to the covenants, terms and provisions set forth in this Agreement, which covenants, terms and provisions shall run with the land, and shall be binding upon and inure to the benefit of each Party and each other Person having any interest therein during such Party's ownership of the Shared Facilities and Rights and the Shared Premises, and their respective grantees, heirs, successors and permitted assigns, and shall create privity of contract and estate among the Parties and their respective grantees, heirs, successors and permitted assigns.

(b) Concurrently with the execution and delivery of this Agreement, the Parties will execute a Memorandum of this Agreement in the form of Exhibit D hereto, which Memorandum shall be recorded in the official real estate records of the counties in which the Shared Premises are located. The provisions of this Agreement will control, however, with regard to any provisions of this Agreement that may be in conflict with the Memorandum of Agreement.

10.17 Mobile Sierra. The Parties agree that all rates, terms and conditions as specified in this Agreement shall remain in effect in accordance with their terms and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or Section 206 of the Federal Power Act of 1935, as amended, 16 U.S.C. §§ 792 *et seq.* Absent agreement of the Parties to a proposed change, the standard of review for changes to any section of this Agreement by a Party, a non-Party or FERC acting *sue sponte*, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), or will be the most stringent standard permissible under then-Applicable Law.

10.18 Confidentiality. Each Party agrees to maintain the confidentiality of information clearly identified at the time of delivery as confidential provided by a Party pursuant to this Agreement or the LGIA Co-Tenancy Agreement, except that such information may be disclosed (a) to Affiliates, managers, members, directors, officers, employees, advisors, agents, consultants, lenders and potential lenders, investors and purchasers to or of a Party or any of its

Affiliates (and their respective advisors, consultants and counsel); it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information, (b) to the extent required by any Governmental Authority having jurisdiction over the receiving Party or Applicable Law, (c) in any legal action or proceeding relating to this Agreement, the LGIA Co-Tenancy Agreement or either Generating Facility, or (d) to the extent such information (i) becomes publicly available other than by breach of this Section 10.18, (ii) was available to the receiving Party on a non-confidential basis prior to its disclosure by the disclosing Party, (iii) becomes available to the receiving Party on a non-confidential basis from a third-Person not under any obligation to the disclosing Party not to disclose such information or (iv) is independently developed by the receiving Party.

10.19 Further Assurances. Each Party shall take all such further actions, and execute and deliver all such further instruments or documents, as may be reasonably requested by any other Party to effectuate the purposes of this Agreement.

*[Signature Page to Follow]*



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

DESERT SUNLIGHT 250, LLC

By:   
Name: **Amy Black**  
Title: **Assistant Treasurer**

DESERT SUNLIGHT 300, LLC

By:   
Name: **Amy Black**  
Title: **Assistant Treasurer**

DESERT SUNLIGHT HOLDINGS, LLC

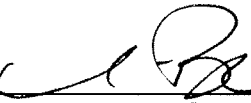
By:   
Name: **Amy Black**  
Title: **Assistant Treasurer**

EXHIBIT A-1

250 MW Generating Facility

*See attached.*

Exhibit A-1-1

(PROJECT SITE):

BEING A PORTION OF SECTION 10, SECTION 11, SECTION 13, SECTION 14, SECTION 15, SECTION 22, SECTION 23 AND SECTION 24, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°35'55" WEST, 1854.94 FEET; THENCE NORTH 00°00'00" EAST, 1698.52 FEET; THENCE NORTH 80°00'00" WEST, 524.10 FEET; THENCE NORTH 00°00'00" EAST, 1183.23 FEET; THENCE NORTH 80°00'00" WEST, 4169.64 FEET; THENCE NORTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 21°32'28" EAST, 748.53 FEET; THENCE SOUTH 38°10'32" EAST, 841.33 FEET; THENCE SOUTH 22°30'45" EAST, 1294.14 FEET; THENCE SOUTH 37°52'31" EAST, 889.13 FEET; THENCE SOUTH 57°59'33" EAST, 1087.81 FEET; THENCE SOUTH 41°42'13" EAST, 1848.13 FEET; THENCE SOUTH 63°10'49" EAST, 981.35 FEET; THENCE SOUTH 57°30'51" EAST, 2694.99 FEET; THENCE SOUTH 37°56'12" EAST, 4322.74 FEET; THENCE SOUTH 19°46'45" EAST, 1536.66 FEET; THENCE SOUTH 00°00'00" EAST, 2168.40 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 24; THENCE ALONG SAID SOUTH LINE OF SECTION 24 SOUTH 89°39'50" WEST, 1198.02 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 24; THENCE CONTINUING ALONG SAID SOUTH LINE OF SECTION 24 SOUTH 89°38'27" WEST, 2639.56 FEET TO THE POINT OF BEGINNING.

(EASEMENT AREA 1)

LYING WITHIN SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE EAST LINE THEREOF NORTH 00°05'14" WEST, 3524.11 FEET; THENCE NORTH 80°00'00" WEST, 1120.47 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 2018.81 FEET; THENCE NORTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 101.54 FEET; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 2558.14 FEET; THENCE SOUTH 00°00'00" EAST, 111.70 FEET; THENCE NORTH 80°00'00" WEST, 6778.55 FEET; THENCE NORTH 00°00'00" EAST, 111.70 FEET; THENCE SOUTH 80°00'00" EAST, 2069.58 FEET; THENCE NORTH 00°00'00" EAST, 11683.64 FEET; THENCE SOUTH 21°32'28" EAST, 40.85 FEET; THENCE SOUTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 80°00'00" EAST, 15.23 FEET; TO THE POINT OF BEGINNING.

(EASEMENT AREA 2)

LYING WITHIN SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 3177.13 FEET; THENCE NORTH 00°00'00" EAST, 50.00 FEET; THENCE NORTH 89°24'08" EAST, 3176.69 FEET; THENCE NORTH 89°35'55" EAST, 3499.13 FEET; THENCE SOUTH 00°00'00" EAST, 50.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 23; THENCE ALONG SAID SOUTH LINE OF SECTION 23 SOUTH 89°35'55" WEST, 3498.69 FEET TO THE POINT OF BEGINNING.

EXHIBIT A-2

300 MW Generating Facility

*See attached.*

Exhibit A-2-1

(PROJECT SITE):

LYING WITHIN SECTION 9, SECTION 10, SECTION 15, SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 3177.13 FEET; THENCE NORTH 00°00'00" EAST, 2887.56 FEET; THENCE NORTH 80°00'00" WEST, 2140.68 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 22; THENCE ALONG SAID WEST LINE OF SECTION 22 NORTH 00°23'08" WEST, 2008.41 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 15; THENCE ALONG THE WEST LINE THEREOF NORTH 00°12'21" EAST, 5328.91 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 9; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°03'41" WEST, 2727.05 FEET; THENCE NORTH 00°00'00" EAST, 974.02 FEET; THENCE SOUTH 48°02'39" WEST, 1483.94 FEET TO A POINT ON SAID SOUTH LINE OF SECTION 9; THENCE ALONG SAID SOUTH LINE OF SECTION 9, SOUTH 89°03'41" WEST, 99.13 FEET; THENCE NORTH 00°00'00" EAST, 450.39 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE NORTH 48°02'39" EAST, 6726.01 FEET; THENCE NORTH 90°00'00" EAST, 1668.00 FEET; THENCE SOUTH 61°22'16" EAST, 1332.96 FEET; THENCE SOUTH 21°32'28" EAST, 667.73 FEET; THENCE SOUTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 80°00'00" EAST, 4169.64 FEET; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 524.10; THENCE SOUTH 00°00'00" EAST, 1698.52 TO A POINT ON THE SOUTH LINE OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°35'55" WEST, 3498.69 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "A", THENCE NORTH 00°00'00" EAST, 107.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°00'00" EAST, 3230.17 FEET; THENCE NORTH 47°55'23" EAST, 1595.20 FEET; THENCE NORTH 90°00'00" EAST, 3598.08 FEET; THENCE SOUTH 48°02'39" WEST, 6430.50 FEET TO THE POINT OF BEGINNING.

(EASEMENT AREA 1)

BEING A PORTION OF SECTION 10, SECTION 15 AND SECTION 22, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE EAST LINE THEREOF NORTH 00°05'14" WEST, 3524.11 FEET; THENCE NORTH 80°00'00" WEST, 1120.47 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 80°00'00" WEST, 15.23 FEET; THENCE NORTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 21°32'28" EAST, 40.85 FEET; THENCE SOUTH 00°00'00" EAST, 10429.70 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### Shared Facilities and Rights Agreements

#### Part I. Shared Premises Agreements

1. County of Riverside Franchise Agreement/Ordinance.
2. County of Riverside Encroachment Permit for construction of the Gen-Tie Line.
3. County of Riverside Public Use Permit.
4. County of Riverside Encroachment Permit to excavate and construct deceleration lanes at driveway entrances of Kaiser Road.
5. California Department of Transportation Encroachment Permit.
6. Metropolitan Water District Long-Term License.
7. U.S. Fish and Wildlife Service Biological Opinion and Incidental Take Statement.
8. California Public Utilities Commission Certification of Final Environmental Impact Statement as compliant with the California Environmental Quality Act, issued in connection with the Permit to Construct for the Red Bluff Substation.
9. Bureau of Land Management Right of Way.
10. California Department of Fish & Game Streambed Alteration Agreement.
11. California Department of Fish & Game Consistency Determination pursuant to the California Endangered Species Act.
12. National Historic Preservation Act Section 106 Consultation – Memorandum of Agreement.
13. Consent or other agreements with Southern California Edison granting permission for transmission line crossings.

#### Part II. Other Agreements

1. LGIA Co-Tenancy Agreement.
2. Shared Facilities Construction Agreement.
3. Shared Facilities Equipment Supply Agreement.
4. Shared Facilities O&M Agreement.



5. Administrative Services Agreement, dated as of September 22, 2011, among Desert 250, Desert 300 and Holdings.

EXHIBIT C

Shared Premises

*See attached.*

PARCEL A:

(PROJECT SITE):

BEING A PORTION OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89°24'08" EAST, 1565.22 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF KAISER ROAD, A 300 FOOT WIDE PUBLIC ROAD EASEMENT PER INSTRUMENT NO. 57641 OF OFFICIAL RIVERSIDE COUNTY RECORDS, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE FROM A TANGENT WHICH BEARS NORTH 18°37'50" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 19°07'22", AN ARC DISTANCE OF 3370.94 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 22, SAID POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE ALONG SAID WEST LINE OF SECTION 22 NORTH 00°23'08" WEST, 307.45 FEET; THENCE SOUTH 80°00'00" EAST, 2140.68 FEET; THENCE SOUTH 00°00'00" EAST, 2887.56 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE OF SECTION 22 SOUTH 89°24'08" WEST, 520.97 FEET TO THE POINT OF BEGINNING.

(TRANSMISSION CORRIDOR):

LYING WITHIN SECTION 22, SECTION 27 AND SECTION 34, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SECTION 3, SECTION 10, SECTION 15, SECTION 22, SECTION 23, SECTION 24, AND SECTION 25, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SECTION 28, SECTION 29, SECTION 30 AND SECTION 33, TOWNSHIP 5 SOUTH, RANGE 16 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE AFOREMENTIONED POINT "A", SAID POINT BEING ON THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT ALSO BEING A POINT ON A CURVE; THENCE FROM A TANGENT WHICH BEARS SOUTH 37°45'13" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 10100.00 FEET, THROUGH A CENTRAL ANGLE OF 10°21'12", AN ARC DISTANCE OF 1825.05 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD, FROM A TANGENT WHICH BEARS SOUTH 27°24'01" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 10100.00 FEET, THROUGH A CENTRAL ANGLE OF 00°56'27", AN ARC DISTANCE OF 165.84 FEET; THENCE SOUTH 47°49'32" WEST, 145.52 FEET TO A POINT ON A NON TANGENT CURVE; THENCE FROM A TANGENT WHICH BEARS SOUTH 26°13'58" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 9960.00 FEET, THROUGH A CENTRAL ANGLE OF 11°18'01", AN ARC DISTANCE OF 1964.40 FEET TO A POINT ON THE NORTH LINE OF THE EAGLE MOUNTAIN WASTEWAY; THENCE SOUTH 89°23'43" WEST, 165.23 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD, SAID POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE FROM A TANGENT WHICH BEARS NORTH 15°10'17" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 02°48'54", AN ARC DISTANCE OF 481.47 FEET TO A POINT ON SAID NORTH LINE OF EAGLE MOUNTAIN WASTEWAY; THENCE ALONG SAID NORTH LINE NORTH 00°04'59" EAST, 197.85 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 66.62 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD;

THENCE FROM A TANGENT WHICH BEARS NORTH 19°12'09" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 07°44'05", AN ARC DISTANCE OF 1322.94 FEET; THENCE NORTH 47°49'32" EAST, 310.59 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "B", SAID POINT BEING A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE FROM A TANGENT WHICH BEARS SOUTH 15°10'17" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 14°26'25", AN ARC DISTANCE OF 2469.91 FEET TO A POINT TANGENCY; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 199.61 FEET TO A POINT ON THE SOUTH LINE OF SAID EAGLE MOUNTAIN WASTEWAY, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTH LINE NORTH 89°22'04" EAST, 160.00 FEET; THENCE SOUTH 00°43'52" EAST, 17886.90 FEET TO A POINT ON THE SOUTH LINE OF SECTION 10; THENCE ALONG SAID SOUTH LINE SOUTH 89°19'08" WEST, 160.00 FEET TO A POINT ON THE SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT HEREINAFTER REFERRED TO AS POINT "C"; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD NORTH 00°43'52" WEST, 17887.03 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "C", SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF KAISER ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 2635.57 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 15, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTH LINE OF THE NORTHEAST QUARTER SECTION 15 NORTH 89°15'40" EAST, 160.00 FEET; THENCE SOUTH 00°43'52" EAST, 4852.30 FEET; THENCE NORTH 88°50'10" EAST, 2998.07 FEET; THENCE SOUTH 45°17'35" EAST, 318.06 FEET; THENCE NORTH 88°50'09" EAST, 896.80 FEET; THENCE SOUTH 45°00'00" EAST, 3977.04 FEET; THENCE NORTH 89°19'47" EAST, 18513.88 FEET; THENCE SOUTH 00°40'13" EAST, 5184.38 FEET; THENCE SOUTH 76°50'37" EAST, 269.77 FEET; THENCE SOUTH 12°34'01" WEST, 160.01 FEET; THENCE NORTH 76°50'37" WEST, 396.81 FEET; THENCE NORTH 00°40'13" WEST, 5149.77 FEET; THENCE SOUTH 89°19'47" WEST, 18421.25 FEET; THENCE NORTH 45°00'00" WEST, 3976.23 FEET; THENCE SOUTH 88°50'09" WEST, 896.32 FEET; THENCE NORTH 45°17'35" WEST, 318.06 FEET; THENCE SOUTH 88°50'10" WEST, 3091.57 FEET TO A POINT ON THE WEST LINE OF SAID KAISER ROAD; THENCE ALONG SAID WEST LINE OF KAISER ROAD NORTH 00°43'52" WEST, 5013.49 FEET TO THE POINT OF BEGINNING.

PARCEL B:

MWD 34.5 kV crossing (9a)

That portion of Section 9, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California described as follows:

COMMENCING at the southeast corner of said Section 9 as marked by a two inch diameter iron pipe with brass cap, stamped Section 9, 10, 16, 15 T4S, R15E, tagged L.S. 5134 as shown on a Record of Survey filed in Book 126, Pages 77 through 86 inclusive of Record of Survey, in the Office of the County Recorder of said County; thence along the southerly line of said Section 9 S 89° 03' 14" W 4562.90 feet to a 1½ inch diameter iron pipe with brass cap marking the northwesterly right of way line of that portion of said Section 9 conveyed to The Metropolitan Water District of Southern California by act of Congress

approved June 18, 1932 (ch. 270, 47 Stat. 324), tagged L.S. 5134 as shown on said Record of Survey; thence along the said northwesterly right of way line N 48° 02' 39" E 2476.60 feet to the POINT OF BEGINNING; thence continuing along said northwesterly right of way line N 48° 02' 39" E 50.00 feet; thence S 41° 57' 21" E 80.00 feet to the southeasterly right of way line of said conveyance to Metropolitan Water District; thence along said southeasterly right of way line S 48° 02' 39" W 50.00 feet; thence N 41° 57' 21" W 80.00 feet to said northwesterly right of way line and the POINT OF BEGINNING.

MWD access road crossing (9b)

That portion of Section 9, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California described as follows:

COMMENCING at the southeast corner of said Section 9 as marked by a two inch diameter iron pipe with brass cap, stamped Section 9, 10, 16, 15 T4S, R15E, tagged L.S. 5134 as shown on a Record of Survey filed in Book 126, Pages 77 through 86 inclusive of Record of Survey, in the Office of the County Recorder of said County; thence along the southerly line of said Section 9 S 89° 03' 14" W 4562.90 feet to a 1½ inch diameter iron pipe with brass cap marking the northwesterly right of way line of that portion of said Section 9 conveyed to The Metropolitan Water District of Southern California by act of Congress approved June 18, 1932 (ch. 270, 47 Stat. 324), tagged L.S. 5134 as shown on said Record of Survey; thence along the said northwesterly right of way line N 48° 02' 39" E 873.76 feet to the POINT OF BEGINNING; thence continuing along said northwesterly right of way line N 48° 02' 39" E 30.00 feet; thence S 41° 57' 21" E 80.00 feet to the southeasterly right of way line of said conveyance to Metropolitan Water District; thence along said southeasterly right of way line S 48° 02' 39" W 30.00 feet; thence N 41° 57' 21" W 80.00 feet to said northwesterly right of way line and the POINT OF BEGINNING.

MWD Gentie crossing of spillway

A strip of land 160 feet wide lying within that W½ of Section 27, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California lying 80.00 feet on each side of the following described centerline:

For the purposes of this description it is intended for the centerline of said 160.00 feet wide strip of land to be 80.00 feet easterly of, as measured at right angles and radially to, the westerly line of Kaiser Road as said Kaiser Road is shown on a Record of Survey filed in Book 73, Pages 24 through 30 inclusive of Record of Surveys, in the Office of the County Recorder of said County.

COMMENCING at the northwest corner of said Section conveyed to The Metropolitan Water District of Southern California by act of Congress approved June 18, 1932 (ch. 270, 47 Stat. 324), as marked by a two inch diameter iron pipe with brass cap, stamped L.S. 4339 M.W.D. as shown on said Record of Survey; thence along said northerly line of said Section N 89° 24' 13" E 1333.13 feet to the beginning of a non-tangent curve, concave westerly, having a radius of 9,880.00 feet and the POINT OF BEGINNING of said described centerline, a radial line to said beginning bears N 70° 56' 46" E; thence southerly along the arc of said curve 3159.73 feet; thence on a tangent line S 00° 43' 52" E 197.67 feet to the southerly line of the N½NE¼SW¼ of said Section and the POINT OF TERMINATION of said described centerline.

The side lines of said strip of land are to be shortened or lengthened so as to terminate northerly on said northerly line of said S½NE¼NW¼ and northerly on said Section.

Except there from the N½NE¼NW¼ of said Section

PARCEL C: Franchise Agreement

BEING A PORTION OF;

(A) THE RIGHT-OF-WAY OF KAISER ROAD, SAID ROAD BEING A PUBLIC ROAD EASEMENT PER THAT CERTAIN DOCUMENT RECORDED JUNE 20, 1962 AS DOCUMENT NO. 57641 OF OFFICIAL RIVERSIDE COUNTY, CALIFORNIA RECORDS, LYING WITHIN SECTION 22, SECTION 27 AND SECTION 34, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SECTION 3, SECTION 10, SECTION 15 AND SECTION 22, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA,

AND

(B) RIVERSIDE COUNTY'S FEE INTEREST IN A PORTION OF KAISER ROAD PURSUANT TO THAT CERTAIN DOCUMENT RECORDED NOVEMBER 26, 1962 AS DOCUMENT NO. 108734 OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN THE NORTH ONE-HALF OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA.

FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89°24'08" EAST, 1565.22 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE WITH A RADIAL BEARING OF NORTH 71°22'10" EAST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 07°49'44", AN ARC DISTANCE OF 1380.05 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 47°49'32" WEST, 145.52 FEET TO A POINT ON A NON TANGENT CURVE, WITH A RADIAL BEARING OF NORTH 63°46'02" EAST; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 9960.00 FEET, THROUGH A CENTRAL ANGLE OF 25°30'06", AN ARC DISTANCE OF 4433.07 FEET; THENCE SOUTH 00°43'52" EAST, 25574.50 FEET; THENCE NORTH 88°50'11" EAST, 140.02 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 160.00 FEET; THENCE SOUTH 88°50'11" WEST 300.01 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD NORTH 00°43'52" WEST, 25735.71 FEET TO A POINT OF CURVATURE; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 26°12'22", AN ARC DISTANCE OF 4482.35 FEET; THENCE NORTH 47°49'32" EAST, 310.59 FEET TO A POINT ON A NON TANGENT CURVE WITH A RADIAL BEARING OF NORTH 62°35'59" EAST, SAID POINT BEING ON THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE OF KAISER ROAD; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 00°56'27", AN ARC DISTANCE OF 165.84 FEET TO THE POINT OF BEGINNING.

EXHIBIT D

Form of Memorandum

*See attached.*

RECORDED AT THE REQUEST OF:

DESERT SUNLIGHT 250, LLC  
c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Sunanda Behara, Business Manager

DESERT SUNLIGHT 300, LLC  
c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Sunanda Behara, Business Manager

DESERT SUNLIGHT HOLDINGS, LLC  
c/o NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Sunanda Behara, Business Manager

WHEN RECORDED MAIL TO:

NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408-0428  
Telephone: (561) 304-5109  
Facsimile: (561) 691-7309  
Attention: Sunanda Behara, Business Manager

**MEMORANDUM**

This MEMORANDUM (the “Memorandum”) is made this \_\_\_ day of September 2011 by and between, DESERT SUNLIGHT 250, LLC, a Delaware limited liability company (“Desert 250”), having an office at 700 Universe Boulevard, Juno Beach, FL 33408-0428, DESERT SUNLIGHT 300, LLC, a Delaware limited liability company (“Desert 300,” and together with Desert 300, the “Co-Tenants”), having an address at 700 Universe Boulevard, Juno Beach, FL 33408-0428 and DESERT SUNLIGHT HOLDINGS, LLC, a Delaware limited liability company (the “Manager” and, collectively with the Co-Tenants, the “Parties”), having an address at 700 Universe Boulevard, Juno Beach, FL 33408-0428, to evidence and give record notice of that certain Co-Tenancy and Shared Facilities Agreement, dated as of the date hereof, between Desert 250, Desert 300 and the Manager (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Agreement”). Capitalized terms used herein but not defined herein shall have their respective meanings as set forth in the Agreement. To the extent of any conflict between the provisions of this Memorandum and the Agreement, the terms of the Agreement shall govern and control.



## RECITALS

WHEREAS, Desert 250 is planning to develop, construct, own, operate and maintain an approximately 250 MW solar photovoltaic generating facility located in Desert Center, California, on the real property as more particularly described on Exhibit A-1 hereto, which does not include the Shared Facilities and Rights (as defined in the Agreement, which definition includes the Shared Facilities (as defined below) and the Shared Premises (as defined below) and Shared Premises Agreements (as defined below)) (the “250 MW Generating Facility”);

WHEREAS, Desert 300 is planning to develop, construct, own, operate and maintain an approximately 300 MW solar photovoltaic generating facility located in Desert Center, California, on the real property as more particularly described on Exhibit A-2 hereto, which does not include the Shared Facilities and Rights (the “300 MW Generating Facility,” and collectively with the 250 MW Generating Facility, the “Generating Facilities”);

WHEREAS, the Co-Tenants are jointly planning to develop, construct, own, operate and maintain certain shared facilities as more particularly described in Section 3 of Exhibit A to the Shared Facilities Construction Agreement and Exhibit A to the Shared Facilities Equipment Supply Agreement and defined in the Agreement (“Shared Facilities”);

WHEREAS, the Co-Tenants have obtained or will obtain certain rights-of-way, easements, leases and other instruments or agreements that create or evidence real property interests in respect of the Shared Facilities, including those instruments and agreements more particularly described on Part I of Exhibit B hereto (collectively, the “Shared Premises Agreements”), and that provide for the right to develop, construct, own, operate and/or maintain the Shared Facilities on the real property as more particularly described on Exhibit C hereto (the “Shared Premises”);

WHEREAS, the Co-Tenants desire to use the Shared Facilities and Rights pursuant to the terms of the Agreement and recognize that the physical partition of the Shared Facilities and Rights, or any part thereof, whether by partition in-kind or sale and division of the proceeds thereof, would be impossible, impractical and wholly inconsistent with the purposes for which the Agreement was made; and

WHEREAS, the Co-Tenants and the Manager wish to show for the public record the existence of the aforesaid Agreement and their respective interests therein.

NOW, THEREFORE, in consideration of the mutual premises set forth above and the covenants, agreements and provisions made in this Memorandum, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties state as follows:

1. On the date hereof, the Parties have entered into the Agreement, which continues until the earlier of (a) written agreement by all the Parties to wind-up all the Shared Facilities and Rights (and completion of such wind-up) or otherwise terminate the Agreement and (b) the acquisition by a Co-Tenant of all of the ownership interests in all Shared Facilities and Rights.

2. The Shared Facilities and Rights and the Shared Premises shall be held, conveyed, assigned, hypothecated, encumbered, used and occupied, subject to the covenants, terms and provisions set forth in the Agreement, which covenants, terms and provisions shall run with the land, and shall be binding upon and inure to the benefit of each Party and each other Person having any interest therein during such Party's ownership of the Shared Facilities and Rights, and their respective grantees, heirs, successors and permitted assigns, and shall create privity of contract and estate among the Parties and their respective grantees, heirs, successors and permitted assigns.
3. To the extent practicable, all After-Acquired Shared Facilities and Rights shall be directly acquired and held by the Co-Tenants as tenants-in-common, with each Co-Tenant owning its Co-Tenancy Interest therein. Unless otherwise determined by the Co-Tenants, any Co-Tenant that acquires in its own name, or an Affiliate's name, any After-Acquired Shared Facilities and Rights shall acquire and hold the same subject in all respects to the Agreement, and such Co-Tenant shall transfer and assign an undivided ownership interest therein to the other Co-Tenant equal to such other Co-Tenant's Co-Tenancy Percentage Interest as required pursuant to the Agreement.
4. The Co-Tenants shall have joint responsibilities and each appoint the Manger to act as their agent on the terms provided for in the Agreement.
5. The Agreement contains the following provision:

The Co-Tenants recognize that the physical partition of the Shared Facilities and Rights or any part thereof, whether by partition in-kind or sale and division of the proceeds thereof, would be impossible and impractical and wholly inconsistent with the purposes for which the Agreement is made. ACCORDINGLY, EACH CO-TENANT HEREBY AGREES (FOR ITSELF AND FOR EACH OF ITS SUCCESSORS AND ASSIGNS) THAT IT SHALL NOT TAKE ANY ACTION AT ANY TIME, BY JUDICIAL PROCEEDING OR OTHERWISE, TO PARTITION THE SHARED FACILITIES AND RIGHTS OR ANY PART THEREOF, IN ANY WAY, WHETHER BY PARTITION IN-KIND OR BY SALE AND DIVISION OF THE PROCEEDS THEREOF. FURTHER, EACH CO-TENANT IRREVOCABLY WAIVES THE RIGHT OF PARTITION AND THE BENEFIT OF ALL STATUTORY OR COMMON LAW THAT MAY NOW OR HEREAFTER AUTHORIZE SUCH PARTITION OF THE SHARED FACILITIES AND RIGHTS OR ANY PART THEREOF. THE CO-TENANTS AGREE THAT THIS SECTION 4.1.2 SHALL BE INCLUDED VERBATIM IN THE MEMORANDUM TO BE RECORDED PURSUANT TO SECTION 10.16(b).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed as of the day and year first above written.

CO-TENANT:

DESERT SUNLIGHT 250, LLC, a Delaware limited liability company

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

Name:

Title:

STATE OF )  
 ) SS:  
COUNTY OF )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or provide to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Memorandum by DESERT SUNLIGHT 250, LLC, a Delaware limited liability company, and acknowledged to me that that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity on behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

CO-TENANT:

DESERT SUNLIGHT 300, LLC, a Delaware limited liability company

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

Name:

Title:

STATE OF )  
 ) SS:  
COUNTY OF )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or provide to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Memorandum by DESERT SUNLIGHT 300, LLC, a Delaware limited liability company, and acknowledged to me that that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity on behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

MANAGER:

DESERT SUNLIGHT HOLDINGS, LLC, a  
Delaware limited liability company

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

Name:

Title:

STATE OF )  
 ) SS:  
COUNTY OF )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or provide to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Memorandum by DESERT SUNLIGHT HOLDINGS, LLC, a Delaware limited liability company, and acknowledged to me that that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity on behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[END OF SIGNATURE PAGES]

EXHIBIT A-1

250 MW Generating Facility

*See attached.*

Exhibit A-1-1

(PROJECT SITE):

BEING A PORTION OF SECTION 10, SECTION 11, SECTION 13, SECTION 14, SECTION 15, SECTION 22, SECTION 23 AND SECTION 24, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°35'55" WEST, 1854.94 FEET; THENCE NORTH 00°00'00" EAST, 1698.52 FEET; THENCE NORTH 80°00'00" WEST, 524.10 FEET; THENCE NORTH 00°00'00" EAST, 1183.23 FEET; THENCE NORTH 80°00'00" WEST, 4169.64 FEET; THENCE NORTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 21°32'28" EAST, 748.53 FEET; THENCE SOUTH 38°10'32" EAST, 841.33 FEET; THENCE SOUTH 22°30'45" EAST, 1294.14 FEET; THENCE SOUTH 37°52'31" EAST, 889.13 FEET; THENCE SOUTH 57°59'33" EAST, 1087.81 FEET; THENCE SOUTH 41°42'13" EAST, 1848.13 FEET; THENCE SOUTH 63°10'49" EAST, 981.35 FEET; THENCE SOUTH 57°30'51" EAST, 2694.99 FEET; THENCE SOUTH 37°56'12" EAST, 4322.74 FEET; THENCE SOUTH 19°46'45" EAST, 1536.66 FEET; THENCE SOUTH 00°00'00" EAST, 2168.40 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 24; THENCE ALONG SAID SOUTH LINE OF SECTION 24 SOUTH 89°39'50" WEST, 1198.02 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 24; THENCE CONTINUING ALONG SAID SOUTH LINE OF SECTION 24 SOUTH 89°38'27" WEST, 2639.56 FEET TO THE POINT OF BEGINNING.

(EASEMENT AREA 1)

LYING WITHIN SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE EAST LINE THEREOF NORTH 00°05'14" WEST, 3524.11 FEET; THENCE NORTH 80°00'00" WEST, 1120.47 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 2018.81 FEET; THENCE NORTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 101.54 FEET; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 2558.14 FEET; THENCE SOUTH 00°00'00" EAST, 111.70 FEET; THENCE NORTH 80°00'00" WEST, 6778.55 FEET; THENCE NORTH 00°00'00" EAST, 111.70 FEET; THENCE SOUTH 80°00'00" EAST, 2069.58 FEET; THENCE NORTH 00°00'00" EAST, 11683.64 FEET; THENCE SOUTH 21°32'28" EAST, 40.85 FEET; THENCE SOUTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 80°00'00" EAST, 15.23 FEET; TO THE POINT OF BEGINNING.

(EASEMENT AREA 2)

LYING WITHIN SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 3177.13 FEET; THENCE NORTH 00°00'00" EAST, 50.00 FEET; THENCE NORTH 89°24'08" EAST, 3176.69 FEET; THENCE NORTH 89°35'55" EAST, 3499.13 FEET; THENCE SOUTH 00°00'00" EAST, 50.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 23; THENCE ALONG SAID SOUTH LINE OF SECTION 23 SOUTH 89°35'55" WEST, 3498.69 FEET TO THE POINT OF BEGINNING.

EXHIBIT A-2

300 MW Generating Facility

*See attached.*

Exhibit A-2-1



(PROJECT SITE):

LYING WITHIN SECTION 9, SECTION 10, SECTION 15, SECTION 22 AND SECTION 23, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 3177.13 FEET; THENCE NORTH 00°00'00" EAST, 2887.56 FEET; THENCE NORTH 80°00'00" WEST, 2140.68 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 22; THENCE ALONG SAID WEST LINE OF SECTION 22 NORTH 00°23'08" WEST, 2008.41 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 15; THENCE ALONG THE WEST LINE THEREOF NORTH 00°12'21" EAST, 5328.91 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 9; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°03'41" WEST, 2727.05 FEET; THENCE NORTH 00°00'00" EAST, 974.02 FEET; THENCE SOUTH 48°02'39" WEST, 1483.94 FEET TO A POINT ON SAID SOUTH LINE OF SECTION 9; THENCE ALONG SAID SOUTH LINE OF SECTION 9, SOUTH 89°03'41" WEST, 99.13 FEET; THENCE NORTH 00°00'00" EAST, 450.39 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE NORTH 48°02'39" EAST, 6726.01 FEET; THENCE NORTH 90°00'00" EAST, 1668.00 FEET; THENCE SOUTH 61°22'16" EAST, 1332.96 FEET; THENCE SOUTH 21°32'28" EAST, 667.73 FEET; THENCE SOUTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 80°00'00" EAST, 4169.64 FEET; THENCE SOUTH 00°00'00" EAST, 1183.23 FEET; THENCE SOUTH 80°00'00" EAST, 524.10; THENCE SOUTH 00°00'00" EAST, 1698.52 TO A POINT ON THE SOUTH LINE OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°35'55" WEST, 3498.69 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "A", THENCE NORTH 00°00'00" EAST, 107.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°00'00" EAST, 3230.17 FEET; THENCE NORTH 47°55'23" EAST, 1595.20 FEET; THENCE NORTH 90°00'00" EAST, 3598.08 FEET; THENCE SOUTH 48°02'39" WEST, 6430.50 FEET TO THE POINT OF BEGINNING.

(EASEMENT AREA 1)

BEING A PORTION OF SECTION 10, SECTION 15 AND SECTION 22, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE ALONG THE EAST LINE THEREOF NORTH 00°05'14" WEST, 3524.11 FEET; THENCE NORTH 80°00'00" WEST, 1120.47 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 80°00'00" WEST, 15.23 FEET; THENCE NORTH 00°00'00" EAST, 10465.06 FEET; THENCE SOUTH 21°32'28" EAST, 40.85 FEET; THENCE SOUTH 00°00'00" EAST, 10429.70 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### Shared Facilities and Rights Agreements

#### Part I. Shared Premises Agreements

1. County of Riverside Franchise Agreement/Ordinance.
2. County of Riverside Encroachment Permit for construction of the Gen-Tie Line.
3. County of Riverside Public Use Permit.
4. County of Riverside Encroachment Permit to excavate and construct deceleration lanes at driveway entrances of Kaiser Road.
5. California Department of Transportation Encroachment Permit.
6. Metropolitan Water District Long-Term License.
7. U.S. Fish and Wildlife Service Biological Opinion and Incidental Take Statement.
8. California Public Utilities Commission Certification of Final Environmental Impact Statement as compliant with the California Environmental Quality Act, issued in connection with the Permit to Construct for the Red Bluff Substation.
9. Bureau of Land Management Right of Way.
10. California Department of Fish & Game Streambed Alteration Agreement.
11. California Department of Fish & Game Consistency Determination pursuant to the California Endangered Species Act.
12. National Historic Preservation Act Section 106 Consultation – Memorandum of Agreement.
13. Consent or other agreements with Southern California Edison granting permission for transmission line crossings.

#### Part II. Other Agreements

1. LGIA Co-Tenancy Agreement.
2. Shared Facilities Construction Agreement.
3. Shared Facilities Equipment Supply Agreement.
4. Shared Facilities O&M Agreement.

5. Administrative Services Agreement, dated as of September 22, 2011, among Desert 250, Desert 300 and Holdings.

EXHIBIT C

Shared Premises

*See attached.*

PARCEL A:

(PROJECT SITE):

BEING A PORTION OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89°24'08" EAST, 1565.22 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF KAISER ROAD, A 300 FOOT WIDE PUBLIC ROAD EASEMENT PER INSTRUMENT NO. 57641 OF OFFICIAL RIVERSIDE COUNTY RECORDS, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE FROM A TANGENT WHICH BEARS NORTH 18°37'50" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 19°07'22", AN ARC DISTANCE OF 3370.94 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 22, SAID POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE ALONG SAID WEST LINE OF SECTION 22 NORTH 00°23'08" WEST, 307.45 FEET; THENCE SOUTH 80°00'00" EAST, 2140.68 FEET; THENCE SOUTH 00°00'00" EAST, 2887.56 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE OF SECTION 22 SOUTH 89°24'08" WEST, 520.97 FEET TO THE POINT OF BEGINNING.

(TRANSMISSION CORRIDOR):

LYING WITHIN SECTION 22, SECTION 27 AND SECTION 34, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SECTION 3, SECTION 10, SECTION 15, SECTION 22, SECTION 23, SECTION 24, AND SECTION 25, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SECTION 28, SECTION 29, SECTION 30 AND SECTION 33, TOWNSHIP 5 SOUTH, RANGE 16 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE AFOREMENTIONED POINT "A", SAID POINT BEING ON THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT ALSO BEING A POINT ON A CURVE; THENCE FROM A TANGENT WHICH BEARS SOUTH 37°45'13" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 10100.00 FEET, THROUGH A CENTRAL ANGLE OF 10°21'12", AN ARC DISTANCE OF 1825.05 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD, FROM A TANGENT WHICH BEARS SOUTH 27°24'01" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 10100.00 FEET, THROUGH A CENTRAL ANGLE OF 00°56'27", AN ARC DISTANCE OF 165.84 FEET; THENCE SOUTH 47°49'32" WEST, 145.52 FEET TO A POINT ON A NON TANGENT CURVE; THENCE FROM A TANGENT WHICH BEARS SOUTH 26°13'58" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 9960.00 FEET, THROUGH A CENTRAL ANGLE OF 11°18'01", AN ARC DISTANCE OF 1964.40 FEET TO A POINT ON THE NORTH LINE OF THE EAGLE MOUNTAIN WASTEWAY; THENCE SOUTH 89°23'43" WEST, 165.23 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD, SAID POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE FROM A TANGENT WHICH BEARS NORTH 15°10'17" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 02°48'54", AN ARC DISTANCE OF 481.47 FEET TO A POINT ON SAID NORTH LINE OF EAGLE MOUNTAIN WASTEWAY; THENCE ALONG SAID NORTH LINE NORTH 00°04'59" EAST, 197.85 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°24'08" WEST, 66.62 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD;

THENCE FROM A TANGENT WHICH BEARS NORTH 19°12'09" WEST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 07°44'05", AN ARC DISTANCE OF 1322.94 FEET; THENCE NORTH 47°49'32" EAST, 310.59 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "B", SAID POINT BEING A POINT ON A NON TANGENT CURVE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE FROM A TANGENT WHICH BEARS SOUTH 15°10'17" EAST, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 14°26'25", AN ARC DISTANCE OF 2469.91 FEET TO A POINT TANGENCY; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 199.61 FEET TO A POINT ON THE SOUTH LINE OF SAID EAGLE MOUNTAIN WASTEWAY, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTH LINE NORTH 89°22'04" EAST, 160.00 FEET; THENCE SOUTH 00°43'52" EAST, 17886.90 FEET TO A POINT ON THE SOUTH LINE OF SECTION 10; THENCE ALONG SAID SOUTH LINE SOUTH 89°19'08" WEST, 160.00 FEET TO A POINT ON THE SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD, SAID POINT HEREINAFTER REFERRED TO AS POINT "C"; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD NORTH 00°43'52" WEST, 17887.03 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE AFOREMENTIONED POINT "C", SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF KAISER ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 2635.57 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 15, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTH LINE OF THE NORTHEAST QUARTER SECTION 15 NORTH 89°15'40" EAST, 160.00 FEET; THENCE SOUTH 00°43'52" EAST, 4852.30 FEET; THENCE NORTH 88°50'10" EAST, 2998.07 FEET; THENCE SOUTH 45°17'35" EAST, 318.06 FEET; THENCE NORTH 88°50'09" EAST, 896.80 FEET; THENCE SOUTH 45°00'00" EAST, 3977.04 FEET; THENCE NORTH 89°19'47" EAST, 18513.88 FEET; THENCE SOUTH 00°40'13" EAST, 5184.38 FEET; THENCE SOUTH 76°50'37" EAST, 269.77 FEET; THENCE SOUTH 12°34'01" WEST, 160.01 FEET; THENCE NORTH 76°50'37" WEST, 396.81 FEET; THENCE NORTH 00°40'13" WEST, 5149.77 FEET; THENCE SOUTH 89°19'47" WEST, 18421.25 FEET; THENCE NORTH 45°00'00" WEST, 3976.23 FEET; THENCE SOUTH 88°50'09" WEST, 896.32 FEET; THENCE NORTH 45°17'35" WEST, 318.06 FEET; THENCE SOUTH 88°50'10" WEST, 3091.57 FEET TO A POINT ON THE WEST LINE OF SAID KAISER ROAD; THENCE ALONG SAID WEST LINE OF KAISER ROAD NORTH 00°43'52" WEST, 5013.49 FEET TO THE POINT OF BEGINNING.

PARCEL B:

MWD 34.5 kV crossing (9a)

That portion of Section 9, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California described as follows:

COMMENCING at the southeast corner of said Section 9 as marked by a two inch diameter iron pipe with brass cap, stamped Section 9, 10, 16, 15 T4S, R15E, tagged L.S. 5134 as shown on a Record of Survey filed in Book 126, Pages 77 through 86 inclusive of Record of Survey, in the Office of the County Recorder of said County; thence along the southerly line of said Section 9 S 89° 03' 14" W 4562.90 feet to a 1½ inch diameter iron pipe with brass cap marking the northwesterly right of way line of that portion of said Section 9 conveyed to The Metropolitan Water District of Southern California by act of Congress

approved June 18, 1932 (ch. 270, 47 Stat. 324), tagged L.S. 5134 as shown on said Record of Survey; thence along the said northwesterly right of way line N 48° 02' 39" E 2476.60 feet to the POINT OF BEGINNING; thence continuing along said northwesterly right of way line N 48° 02' 39" E 50.00 feet; thence S 41° 57' 21" E 80.00 feet to the southeasterly right of way line of said conveyance to Metropolitan Water District; thence along said southeasterly right of way line S 48° 02' 39" W 50.00 feet; thence N 41° 57' 21" W 80.00 feet to said northwesterly right of way line and the POINT OF BEGINNING.

MWD access road crossing (9b)

That portion of Section 9, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California described as follows:

COMMENCING at the southeast corner of said Section 9 as marked by a two inch diameter iron pipe with brass cap, stamped Section 9, 10, 16, 15 T4S, R15E, tagged L.S. 5134 as shown on a Record of Survey filed in Book 126, Pages 77 through 86 inclusive of Record of Survey, in the Office of the County Recorder of said County; thence along the southerly line of said Section 9 S 89° 03' 14" W 4562.90 feet to a 1½ inch diameter iron pipe with brass cap marking the northwesterly right of way line of that portion of said Section 9 conveyed to The Metropolitan Water District of Southern California by act of Congress approved June 18, 1932 (ch. 270, 47 Stat. 324), tagged L.S. 5134 as shown on said Record of Survey; thence along the said northwesterly right of way line N 48° 02' 39" E 873.76 feet to the POINT OF BEGINNING; thence continuing along said northwesterly right of way line N 48° 02' 39" E 30.00 feet; thence S 41° 57' 21" E 80.00 feet to the southeasterly right of way line of said conveyance to Metropolitan Water District; thence along said southeasterly right of way line S 48° 02' 39" W 30.00 feet; thence N 41° 57' 21" W 80.00 feet to said northwesterly right of way line and the POINT OF BEGINNING.

MWD Gentie crossing of spillway

A strip of land 160 feet wide lying within that W½ of Section 27, Township 4 South, Range 15 East, San Bernardino Meridian, in the County of Riverside, State of California lying 80.00 feet on each side of the following described centerline:

For the purposes of this description it is intended for the centerline of said 160.00 feet wide strip of land to be 80.00 feet easterly of, as measured at right angles and radially to, the westerly line of Kaiser Road as said Kaiser Road is shown on a Record of Survey filed in Book 73, Pages 24 through 30 inclusive of Record of Surveys, in the Office of the County Recorder of said County.

COMMENCING at the northwest corner of said Section conveyed to The Metropolitan Water District of Southern California by act of Congress approved June 18, 1932 (ch. 270, 47 Stat. 324), as marked by a two inch diameter iron pipe with brass cap, stamped L.S. 4339 M.W.D. as shown on said Record of Survey; thence along said northerly line of said Section N 89° 24' 13" E 1333.13 feet to the beginning of a non-tangent curve, concave westerly, having a radius of 9,880.00 feet and the POINT OF BEGINNING of said described centerline, a radial line to said beginning bears N 70° 56' 46" E; thence southerly along the arc of said curve 3159.73 feet; thence on a tangent line S 00° 43' 52" E 197.67 feet to the southerly line of the N½NE¼SW¼ of said Section and the POINT OF TERMINATION of said described centerline.

The side lines of said strip of land are to be shortened or lengthened so as to terminate northerly on said northerly line of said S½NE¼NW¼ and northerly on said Section.

Except there from the N½NE¼NW¼ of said Section

PARCEL C: Franchise Agreement

BEING A PORTION OF;

(A) THE RIGHT-OF-WAY OF KAISER ROAD, SAID ROAD BEING A PUBLIC ROAD EASEMENT PER THAT CERTAIN DOCUMENT RECORDED JUNE 20, 1962 AS DOCUMENT NO. 57641 OF OFFICIAL RIVERSIDE COUNTY, CALIFORNIA RECORDS, LYING WITHIN SECTION 22, SECTION 27 AND SECTION 34, TOWNSHIP 4 SOUTH, RANGE 15 EAST, SECTION 3, SECTION 10, SECTION 15 AND SECTION 22, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA,

AND

(B) RIVERSIDE COUNTY'S FEE INTEREST IN A PORTION OF KAISER ROAD PURSUANT TO THAT CERTAIN DOCUMENT RECORDED NOVEMBER 26, 1962 AS DOCUMENT NO. 108734 OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN THE NORTH ONE-HALF OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 15 EAST, SAN BERNARDINO BASE AND MERIDIAN, RIVERSIDE COUNTY, CALIFORNIA.

FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89°24'08" EAST, 1565.22 FEET TO A POINT ON A NON TANGENT CURVE, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE WITH A RADIAL BEARING OF NORTH 71°22'10" EAST, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 07°49'44", AN ARC DISTANCE OF 1380.05 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 47°49'32" WEST, 145.52 FEET TO A POINT ON A NON TANGENT CURVE, WITH A RADIAL BEARING OF NORTH 63°46'02" EAST; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWEST, HAVING A RADIUS OF 9960.00 FEET, THROUGH A CENTRAL ANGLE OF 25°30'06", AN ARC DISTANCE OF 4433.07 FEET; THENCE SOUTH 00°43'52" EAST, 25574.50 FEET; THENCE NORTH 88°50'11" EAST, 140.02 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE OF KAISER ROAD SOUTH 00°43'52" EAST, 160.00 FEET; THENCE SOUTH 88°50'11" WEST 300.01 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SAID KAISER ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD NORTH 00°43'52" WEST, 25735.71 FEET TO A POINT OF CURVATURE; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF KAISER ROAD, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 9800.00 FEET, THROUGH A CENTRAL ANGLE OF 26°12'22", AN ARC DISTANCE OF 4482.35 FEET; THENCE NORTH 47°49'32" EAST, 310.59 FEET TO A POINT ON A NON TANGENT CURVE WITH A RADIAL BEARING OF NORTH 62°35'59" EAST, SAID POINT BEING ON THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE OF KAISER ROAD; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 10,100.00 FEET, THROUGH A CENTRAL ANGLE OF 00°56'27", AN ARC DISTANCE OF 165.84 FEET TO THE POINT OF BEGINNING.