

**AMENDED AND RESTATED
PHOTOVOLTAIC EQUIPMENT USE AGREEMENT**

This AMENDED AND RESTATED PHOTOVOLTAIC EQUIPMENT USE AGREEMENT (this "Agreement") is entered into as of October 28, 2008, between the CALIFORNIA FAIRS FINANCING AUTHORITY, a joint powers authority and separate public entity of the State of California (the "Authority"), and COUNTY OF MARIN, a county of the State of California (the "Fair Entity").

B A C K G R O U N D:

1. The Authority has previously provided financing for the photovoltaic equipment and related property described in Appendix A hereto (the "Equipment") from the following sources:

(a) from funds provided by National City Commercial Capital Corporation ("National City") under a Master Photovoltaic Equipment Lease-Purchase Agreement dated as of June 2, 2006, including the related Lease Schedules (together, the "2006 Financing Lease"), between National City, as lessor, and the Authority, as lessee; and

(b) from advances made by the Authority from its available funds (the "Advanced Funds").

2. The Authority and the Fair Entity have previously entered into that certain Photovoltaic Equipment Use Agreement dated as of August 22, 2006 (the "2006 Use Agreement"), under which the Authority has licensed to the Fair Entity the use of the Equipment at various locations on the Fair Entity's fairgrounds (the "Fairgrounds"), in consideration of which the Fair Entity has agreed to pay to the Authority certain user fees.

3. The Authority has received a commitment from Municipal Finance Corporation ("MFC") to provide long-term financing for the Equipment, the proceeds of which will be applied to refinance the Authority's obligations to National City under the 2006 Financing Lease and to reimburse the Authority for the Advanced Funds.

4. MFC will provide such long-term financing for the Equipment by entering into a Loan Agreement dated as of June __, 2008 (the "Loan Agreement"), with the Authority under which MFC agrees to make three loans to the Authority, including a Clean Renewable Energy Loan, a Tax-Exempt Loan and a Taxable Loan (together, the "Loans"), and in order to raise the funds needed to make the Loans, MFC will assign its rights under the Loan Agreement to City National Bank, as assignee (the "Assignee").

5. The Authority and the Fair Entity wish to amend and restate the 2006 Use Agreement as provided herein for the purpose of continuing the arrangement for the use of the Equipment by the Fair Entity and for the purpose of securing the portion of the Loans which is allocable to the funding of the Equipment.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the Authority and the Fair Entity formally covenant, agree and bind themselves as follows:

SECTION 1. *Term of this Agreement.* The term of this Agreement (the "Term") shall commence as of the date on which MFC makes the Loans to the Authority (the "Effective Date"), and shall end on the later of (a) the date on which all amounts due to the Authority under this Agreement have been paid in full, or (b) the date on which the Loan Agreement terminates in accordance with its terms.

SECTION 2. *Amendment and Restatement of 2006 Use Agreement.* This Agreement constitutes an amendment and restatement in full of the 2006 Use Agreement. From and after the Effective Date, the 2006 Use Agreement, in the form heretofore executed and delivered by the Authority and the Fair Entity, will be of no further force and effect and will be deemed to be restated in full hereby.

SECTION 3. *Use of the Equipment.* The Authority continues to license to the Fair Entity the use of the Equipment on the Fairgrounds during the Term of this Agreement, without interruption by virtue of the amendment and restatement of the 2006 Use Agreement. Notwithstanding the foregoing, the Fair Entity hereby acknowledges that the Assignee has the right to subject the Equipment to a first priority security interest in favor of the Assignee. The Fair Entity hereby waives any right or interest in the Equipment other than its rights to use and enjoy the Equipment in accordance with the terms of this Agreement for the Term of this Agreement.

SECTION 4. *User Fees.* In consideration of the license of the Equipment by the Authority to the Fair Entity under this Agreement, the Fair Entity hereby agrees to pay to the Authority the following amounts at the following times:

- (a) Payment Amounts and Dates. The Fair Entity shall pay an amount of monthly user fees (the "User Fees") to the Authority (or, at the written direction of the Authority, in whole or in part directly to the Assignee) in the amounts and on the dates as set forth in Appendix B attached hereto and incorporated herein by this reference. The User Fees have been calculated to represent repayment of the amount of \$1,075,028.52, representing the aggregate amount required to (i) refinance the portion of the 2006 Financing Lease attributable to the financing of the equipment, and (ii) reimburse the Authority for the Advanced Funds relating to the Equipment, together with interest accrued thereon at the respective rates borne by the Loans.
- (b) Insurance Payments. In addition to the User Fees payable under subsection (a), the Fair Entity shall pay when due, or reimburse the Authority for payment of, all insurance costs for property damage and loss of revenue purchased through the California Fairs Services Authority with respect to the Equipment.
- (c) Late Charges. If the Fair Entity fails to pay any amounts when due under the foregoing subsections (a) or (b), the amount in default shall accrue interest at the rate of 8.00% per annum (or such lesser rate as shall be the maximum rate permitted by law) until paid in full.
- (d) Prepayment of User Fees. The Fair Entity is entitled to prepay the User Fees, in whole or in part, to the same extent and on the same conditions as the Authority is entitled to prepay the corresponding portion of the Loans allocable to the Equipment, in accordance with the Loan Agreement.

The User Fees and other amounts that are due and payable under this Agreement during each fiscal year of the Fair Entity (a "Fiscal Year") during the Term of this Agreement constitute the total fees and charges for such Fiscal Year and shall be paid by the Fair Entity for and in consideration of the right to use and enjoy the Equipment during each Fiscal Year for which said User Fees and other amounts are to be paid.

SECTION 5. *Budget and Appropriation of User Fees.* The Fair Entity hereby covenants to take such action as is necessary under the laws applicable to the Fair Entity to budget for and include and maintain funds sufficient and available to discharge its obligation to pay User Fees and other amounts due under this Agreement in each Fiscal Year during the Term of this Agreement. The covenants on the part of the Fair Entity herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the Fair Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Fair Entity to carry out and perform the covenants and agreements in this Agreement to be carried out and performed by the Fair Entity.

SECTION 6. *Obligations Absolute.* The obligations of the Fair Entity to pay the User Fees and other amounts under this Agreement and to perform and observe the covenants and agreements contained herein, are absolute and unconditional under any and all circumstances, subject to the terms and conditions of this Agreement and without notice or demand by the Authority, MFC or the Assignee, notwithstanding any dispute between the Authority and the Fair Entity or any other person. The Fair Entity shall not assert any right of set-off, counterclaim or abatement against its obligation to pay User Fees and other amounts under this Agreement.

SECTION 7. *Title to the Equipment.* Title to the Equipment shall be and remain at all times in the Authority during the Term of this Agreement. Nothing in this Agreement shall vest in the Fair Entity any right or title in or to the Equipment other than the right to use and enjoy the Equipment on the terms and conditions provided herein for the Term of this Agreement.

SECTION 8. *Use and Maintenance of Equipment.* The Fair Entity shall use the Equipment for the production of energy. The Fair Entity shall not sublet or lend any Equipment or permit it to be used by anyone other than the Fair Entity and its employees. The Fair Entity shall keep the Equipment in good condition and repair.

SECTION 9. *Access to Equipment.* The Authority shall have access to the Fairgrounds for the purpose of installing, inspecting, maintaining, repairing, modifying, improving or removing the Equipment. The Assignee and its authorized representatives shall have access to the Fairgrounds for the purpose of de-installing and repossessing the Equipment and otherwise exercising its remedies with respect to the Equipment upon the occurrence of an Event of Default under the Loan Agreement or hereunder.

SECTION 10. *Taxes and Insurance.* The Fair Entity is solely responsible for the payment of all property taxes levied on the Equipment or any interest therein. The Authority shall obtain and maintain, at the expense of the Fair Entity, such property damage and public liability insurance as the Authority may require with respect to the Equipment. The proceeds of the insurance relating to the Equipment shall be used by the Authority to either replace the Equipment or prepay its obligations under the Loan Agreement, which shall be applied as a credit against the User Fees that the Fair Entity is obligated to pay hereunder. The Fair Entity shall not be relieved of its obligations to pay User Fees under this Agreement due to inadequate insurance coverage or proceeds to completely pay for loss of or damage to the Equipment.

SECTION 11. *Events of Default; Remedies.* The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

- (a) the Fair Entity fails to pay User Fees or any other payment when and as it becomes due in accordance with the terms of this Agreement and any such failure continues for ten days after the due date thereof;
- (b) the Fair Entity fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Agreement and such failure is not cured within 30 days after receipt of written notice thereof given to the Fair Entity by the Authority, MFC or the Assignee; or
- (c) the Fair Entity applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of the Fair Entity or of all or a substantial part of its assets, or a petition for relief is filed by or against the Fair Entity under any federal or state bankruptcy, insolvency, moratorium or similar law.

Upon the occurrence of an Event of Default under this Agreement, the Authority, MFC or the Assignee (as the Authority's assignee for this purpose) has the right, at its sole option and without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to collect the User Payments and other amounts which may be in default hereunder, and to enforce performance and observance of any obligation, agreement or covenant of the Fair Entity under this Agreement.

SECTION 12. *Attorney's Fees.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party employs attorneys (including inhouse counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by the nondefaulting party.

SECTION 13. *Application Hereof to Refinancing of Loans.* It is the intention of the Authority and the Fair Entity that the provisions of this Agreement shall apply with full force and effect to any bonds, notes or other obligations issued by the Authority for the purpose of refinancing the Loans in whole or in part. To that end, in the event the Authority issues any bonds, notes or other obligations for the purpose of refinancing the Loans in whole or in part, then (a) all references herein to MFC and the Assignee shall apply collectively to the financial institution or other entity which purchases such bonds, notes or other obligations, or which otherwise provides funds to refinance the Loans in whole or in part, and (b) the Authority shall deliver to the Fair Entity a new schedule of User Fees which obligates the Fair Entity to repay its allocable portion of debt service on such bonds, notes or other obligations, and all references herein to the User Fees shall henceforth apply to such revised schedule.

The provisions of this Section 13 shall apply only to a refinancing of the Loans, in whole or in part, which results in the reduction in the amount of User Fees which the Fair Entity is obligated to pay hereunder in each fiscal year, and which does not extend the period of time during which the User Fees are payable hereunder.

SECTION 14. *Assignment and Subletting; Amendment.* Neither the Authority nor the Fair Entity may assign or transfer this Agreement, the Equipment or any rights to the Equipment without the prior written consents of the other party and the Assignee. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties and consented to by the Assignee.

SECTION 15. *Entire Agreement.* This Agreement supersedes all prior and contemporaneous agreements, representations and understanding of the parties with respect to the subject matter hereof.

SECTION 16. *Waiver.* No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

SECTION 17. *Severability.* If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 18. *Further Assurances and Corrective Instruments.* The Authority and the Fair Entity agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

SECTION 19. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

SECTION 20. *Applicable Law.* This Agreement is governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Authority and the Fair Entity have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**CALIFORNIA FAIRS FINANCING
AUTHORITY**

COUNTY OF MARIN, CALIFORNIA

By _____
J. Thomas Baker
Executive Officer

By _____
Charles McGlashan
President,
Marin County Board of Supervisors

ATTEST:

ATTEST:

By _____
Name:
Title:

By _____
Name:
Title: