

EXHIBIT 1

AGREEMENT TO PAY ASSESSMENT AND FINANCE IMPROVEMENTS

COUNTY OF PLACER mPOWER Program

This AGREEMENT TO PAY ASSESSMENT AND FINANCE IMPROVEMENTS (this "**Agreement**") is made and entered into as of this 13 day of August, 2010, by and between the County of Placer (the "**County**") and the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

RECITALS

WHEREAS, the County has established the "Placer money for Property Owner Water & Energy Efficiency Retrofitting Program" (the "**mPOWER Program**") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently fixed to real property (the "**Authorized Improvements**") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("**Chapter 29**") and the issuance of improvement bonds under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "**1915 Act**") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied pursuant to a contract between the property owner and the public agency; and

WHEREAS, the County has conducted the proceedings required by Chapter 29 with respect to the territory within the boundaries of the County; and

WHEREAS, the **County of Placer** has consented to (i) owners of property within its jurisdiction (the "**Participating Property Owners**") participating in the mPOWER Program and (ii) the County conducting assessment proceedings under Chapter 29 and issuing bonds under the 1915 Act or entering into other financing arrangements to finance the Authorized Improvements; and

WHEREAS, pursuant to Chapter 29, the County and the Property Owner wish to enter into a contract pursuant to which the Property Owner will agree to pay an assessment in order to finance the installation on the Property of the Authorized Improvements described in Exhibit B (the "**Improvements**") and the County will agree to provide financing, all on the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the material covenants hereinafter contained, the Property Owner and the County formally covenant, agree and bind themselves and their successors and assigns as follows:

AGREEMENT

Section 1. Purpose. The Property Owner and the County are entering into this Agreement for the purpose of financing the installation of the Improvements identified on Exhibit B on the Property. The County will not finance installation of Improvements other than those listed on Exhibit B.

Section 2. The Property. This Agreement relates to the real property identified on Exhibit A. The Property Owner is the current owner of fee title to the Property and the undersigned possesses all legal authority necessary to execute this Agreement on behalf of the Property Owner.

Section 3. Agreement to Pay Assessment; Prepayment; Non-Completion Assessment.

(a) **Payment of Initial Assessment.** The Property Owner hereby freely and willingly agrees to pay the initial assessment set forth on Exhibit C (the “**Initial Assessment**”). The County will not provide financing in an amount in excess of the Initial Assessment.

Except as otherwise set forth in this Agreement, the Initial Assessment will be paid in the installments set forth in Exhibit C. There are two schedules set forth in Exhibit C. If the County issues a bond or enters into another financing relationship to finance installation of the Improvements on the Property before the County’s deadline for placing the first year’s installments of the Initial Assessment on the County’s property tax roll, then the first year’s installments will be billed on the Property Owner’s property tax bill. Schedule 1 shows the amount of the Initial Assessment and the Initial Assessment installments payable in this circumstance.

If the County issues a bond or enters into another financing relationship to finance installation of the Improvements on the Property after the County’s deadline for placing the first year’s installments of the Initial Assessment on the County’s property tax roll, then the first year’s Initial Assessment installments will be financed and will be included in the amount of the Initial Assessment. Schedule 2 shows the amount of the Initial Assessment and the Initial Assessment installments payable in this circumstance.

Interest will accrue on the Initial Assessment at the interest rate set forth on Exhibit A beginning on the date on which the County issues bonds or enters into another financing relationship to finance installation of Improvements on the Property.

(b) **Payment of Non-Completion Assessment.** The Property Owner hereby freely and willingly agrees to pay the additional assessment (the “**Non-Completion Assessment**”) identified on Exhibit A in the event that the Property Owner fails to install the Improvements in compliance with the mPOWER Program rules or otherwise fails to meet the conditions established by the County for financing through the mPOWER Program. The Property Owner acknowledges that the purpose of the Non-Completion Assessment is to pay any costs incurred by the County in order to release the lien of the Assessment on the Property. The Property Owner further acknowledges that the Non-Completion Assessment will be levied in full by the County as set forth in Section 5898.30 of Chapter 29 in the first fiscal year in which the County is able to cause the Non-Completion Assessment to be placed on the County property tax roll.

(c) **Administrative Expenses.** The Property Owner hereby acknowledges that, pursuant to the 1915 Act, including Sections 8682(b) and 8682.1(a), the County may add

amounts to an annual installment of the Initial Assessment in order to pay for the costs of collecting the Assessment (the “**Additional Administrative Assessment**”; together with the Initial Assessment and the Non-Completion Assessment, the “**Assessment**”).

(d) Prepayment of the Assessment. The Assessment may be prepaid, in whole or in part, at any time upon the payment of (a) the whole or a portion of the unpaid principal component of the Assessment, (b) the accrued but unpaid interest component of the whole or applicable portion of the unpaid principal component of the Assessment through the prepayment date, (c) a prepayment premium in the amount set forth on Exhibit A and (d) the reasonable costs of the County related to such prepayment.

(e) Absolute Obligation. The Property Owner hereby agrees that the Assessment will not be subject to reduction, offset or credit of any kind, except as the result of the scheduled payment or prepayment of the assessment in accordance with this agreement, in the event that the bonds or other financing relationship secured thereby are refunded or for any other reason.

Section 4. Collection of Assessment; Lien. The Assessment, and the interest and penalties thereon as a result of a delinquency in the payment of any installment of the Assessment, shall constitute a lien against the Property until they are paid and shall be collected and shall have the lien priority as set forth in Chapter 29.

The Property Owner acknowledges that if any Assessment installment is not paid when due, the County has the right to have the delinquent installment and its associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys’ fees. The Property Owner acknowledges that, if bonds are sold to finance the Improvements or if the County enters into any other financing relationship in order to finance the Improvements, the County may obligate itself, through a covenant with the owners of the bonds or the provider of any other financing relationship, to exercise its foreclosure rights with respect to delinquent Assessment installments under specified circumstances.

(a) Lender Notification. The County intends to collect the Assessment installment using the county property tax bill. In the event the Property is delinquent in the payment of an installment (the first installment is delinquent after December 10th of each year; second installment is delinquent after April 10th of each year), the County shall send notice of the delinquency to the lender. At least 30 days prior to initiating judicial foreclosure of a delinquent Assessment installment, and for the purpose of giving a lender the opportunity to pay any delinquent Assessment installment(s) (and any penalties and interest), the county will provide each lender whose loan is secured by the Property and whose security interest is recorded in the real property records with written notice of its intent to initiate judicial foreclosure. For the purposes of this section, the County will provide such notice to a lender at the address stated on the lender Acknowledgement executed by the lender or such other address provided by the lender to the County Treasurer-Tax Collector for the purposes of this section 4(a).

(b) Pursuant to the 1915 Act as of the date of this Agreement, (i) the County may order judicial foreclosure of Assessment installments (together with any penalties, fees and costs) if they are not paid when due, (ii) only delinquent Assessment installments can be foreclosed, (iii) non-delinquent Assessments cannot be accelerated or foreclosed, (iv) additional Assessment installments may be added to the foreclosure action as they become delinquent, but not until then, (v) the foreclosure action must be dismissed prior to final judgment upon payment of the amount of any delinquent Assessment installments (together with any penalties,

fees and costs) to the date of payment and (vi) unpaid Assessment installments remain an obligation of the Property following any change of ownership of the Property.

Section 5. Financing of the Improvements.

(a) Agreement to Finance Improvements. The County hereby agrees to use the Assessment to finance the Improvements, including the payment of the County's reasonable costs of administering the mPOWER Program, subject to the Property Owner's compliance with the conditions for such financing established by the County.

(b) Assessment Installments. The Property Owner agrees to the issuance of bonds or the entry into any other financing relationship by the County to finance the installation of the Improvements. The interest rate used to calculate the Initial Assessment installments set forth on Exhibit C is identified on Exhibit A. If the County determines in its reasonable discretion that the Initial Assessment installments may be reduced because the applicable interest rate on the bonds or other financing relationship issued or entered to finance installation of the Improvements is lower than the interest rate specified in Exhibit A, or if the cost of the Improvements, as shown in a final invoice provided to the County by the Property Owner, is less than the amount shown on Exhibit B, then, concurrently with the disbursement of funds to the Property Owner, the County may provide the Property Owner with a schedule of annual Initial Assessment installments that provides for annual installments that are less than those set forth in the attached Exhibit C.

Section 6. Term; Agreement Runs with the Land; Subdivision.

(a) Except as otherwise set forth in this Agreement, this Agreement shall expire upon the final payment or prepayment of the Assessment.

(b) This Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land pursuant to Civil Code Section 1462.

(c) In the event the Property is subdivided while the Assessment remains unpaid, the Assessment will be assigned to the newly-created parcel on which the Improvements are located. If the Improvements no longer exist, the Assessment will be assigned to each of the newly-created parcels on a per-acre basis, unless the County, in its sole discretion, determines that the Assessment should be allocated in an alternate manner.

Section 7. Recordation of Documents. The Property Owner hereby authorizes and directs the County to cause to be recorded in the office of the County Recorder the various notices and other documents required by Chapter 29 and other applicable laws to be recorded against the Property.

Section 8. Notice. To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the obligation to pay the Assessment pursuant to this Agreement.

Section 9. Waivers, Acknowledgment and Agreement. Because this Agreement reflects the Property Owner's free and willing consent to pay the Assessment following a noticed public hearing, the Property Owner hereby waives any otherwise applicable requirements of Article XIII D of the California Constitution or any other provision of California law for an engineer's report, notice, public hearing, protest or ballot.

The Property Owner hereby waives its right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the County undertaken in connection with the mPOWER Program. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Improvements. The Property Owner hereby represents that the Improvements are intended to be permanently fixed to the Property and the Property Owner covenants not to remove the Improvements for use on any other property. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Assessment regardless of whether the Improvements are properly installed, operated or maintained as expected.

The Property Owner hereby agrees that the County is entering into this Agreement solely for the purpose of assisting the Property Owner with the financing of the installation of the Improvements, and that the County has no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. Based upon the foregoing, the Property Owner hereby waives the right to recover from and fully and irrevocably releases the County and any and all agents, employees, attorneys, representatives and successors and assigns of the County from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the subject matter of this Agreement that the Property Owner may now have or hereafter acquire against the County and any and all agents, employees, attorneys, representatives and successors and assigns of the County.

To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By initialing below, the Property Owner agrees to waive the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Property Owner's Initials: _____

The waivers, releases and agreements set forth in this Section 9 shall survive termination of this Agreement.

Section 10. Indemnification. The Property Owner agrees to indemnify, defend, protect, and hold harmless the County and any and all agents, employees, attorneys, representatives and successors and assigns of the County, from and against all losses,

liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Assessment, (ii) the financing by the County of the Improvements, (iii) the Improvements, (iv) or any other fact, circumstance or event related to the subject matter of this Agreement, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Agreement.

The provisions of this Section 10 shall survive the termination of this Agreement.

Section 11. Right to Inspect Property. The Property Owner hereby grants the County, its agents and representatives the right to enter and inspect the Property at any reasonable time, upon reasonable notice, to inspect the Improvements. The Property Owner further hereby grants the County, its agents and representatives the right to examine and copy any documentation relating to the Improvements and to work with applicable utility providers to calculate the benefits attributable to the Improvements.

Section 12. Environmental Benefits. The Property Owner hereby agrees that any credits, such as carbon credits, or other environmental benefits attributable to the Improvements shall be owned by the County.

Section 13. mPOWER Application. The Property Owner hereby represents and warrants to the County that the information set forth in the mPOWER Program Application submitted to the County in connection with its request for financing is true and correct as of the date hereof, and that the representations set forth in the mPOWER Program Application with respect to the Property and the Property Owner are true and correct as of the date hereof as if made on the date hereof.

Section 14. Amendment. Except as set forth in Section 5(b), this Agreement may be modified only by the written agreement of the County and the Property Owner.

Section 15. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the County, the Property Owner and their respective successors and assigns.

The County has the right to assign any or all of its rights and obligations under this Agreement without the consent of the Property Owner. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner will be competent to impair in any way the County's rights, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.

Section 16. Exhibits. The Exhibits to this Agreement are incorporated into this Agreement by this reference as if set forth in their entirety in this Agreement.

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 of this Agreement.

Section 18. Corrective Instruments. The County and the Property Owner 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 in order to carry out the expressed intention of this Agreement.

Section 19. Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Placer, State of California.

Section 20. 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.

SAMPLE

IN WITNESS WHEREOF, the County and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

COUNTY OF PLACER

By: !

Signature: _____

Its: Program Specialist

The following are the authorized signatories of the Property Owner:

Name: _____	Name: _____
By: _____	By: _____
Signature: _____	Signature: _____
Its: _____	Its: _____

GENERAL ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF PLACER COUNTY } SS

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Agreement Number: _____

Property Owner: _____

Property (APN/Legal Description): _

Prepayment Premium: 1st year = 5% of amount prepaid
2nd year = 4% of amount prepaid
3rd, 4th, and 5th year = 3% of amount prepaid

Interest Rate Used to Calculate Initial Assessment Installments: 6.00%

Non-Completion Assessment: An amount equal to 1% of the Initial Assessment identified on Exhibit C

EXHIBIT B
IMPROVEMENTS

Description:

Improvement: Photovoltaic

Size/Amount:

Annual Production (photovoltaic):

Components:

Other:

