



City Council Staff Report

Date: June 23, 2016

NEW BUSINESS

Subject: APPROVAL OF VARIOUS AGREEMENTS WITH SOLARCITY CORPORATION FOR SOLAR PHOTOVOLTAIC SYSTEMS AT THE PALM SPRINGS ANIMAL SHELTER AND PALM SPRINGS CONVENTION CENTER, AND APPROVAL OF A CEQA CATEGORICAL EXEMPTION, AS PART OF THE CITYWIDE SOLAR PROJECT, CITY PROJECT NO. 15-03

From: David H. Ready, City Manager

Initiated by: Marcus L. Fuller, Assistant City Manager/City Engineer

SUMMARY

On September 2, 2015, the City Council received a presentation on the final selection of firms to provide solar photovoltaic systems at various City facilities, and authorized staff to proceed with final contract negotiations with SunEdison and SolarCity for design-build services. Final agreements were previously negotiated and approved with SolarCity for solar photovoltaic systems at the Wastewater Treatment Plant and Sunrise Plaza on October 7, 2015. Contract negotiations with SunEdison for solar photovoltaic systems at 6 other sites continued through January 2016, however, SunEdison could not honor its original pricing, and submitted revised pricing requiring the City to solicit new pricing proposals from all short-listed firms. On the basis of the final pricing proposals received from the short listed firms, staff is recommending that the City Council approve agreements with SolarCity for design-build services for photovoltaic systems at the Palm Springs Animal Shelter and Palm Springs Convention Center.

RECOMMENDATION:

1) Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, MAKING FINDINGS AND AUTHORIZING THE CITY MANAGER TO ENTER INTO CERTAIN INFRASTRUCTURE FINANCING AGREEMENTS AND ASSOCIATED CONTRACTS WITH SOLARCITY CORPORATION PURSUANT TO GOVERNMENT CODE 5956, ET SEQ., FOR THE COMPLETE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF SOLAR PHOTOVOLTAIC SYSTEMS AT THE PALM SPRINGS ANIMAL SHELTER AND AT THE PALM SPRINGS CONVENTION CENTER, AND APPROVING AND ORDERING THE FILING OF A CEQA NOTICE OF EXEMPTION;"

2) Authorize the City Manager to execute all necessary documents.

ITEM NO. 2.B.

BACKGROUND:

On September 18, 2013, the City Council approved an agreement with Newcomb/Anderson/McCormick, Inc., ("NAM"), with an initial scope to perform photovoltaic feasibility analysis related to potential development of photovoltaic ("PV") systems at various City facilities. Also on September 18, 2013, the City Council approved a funding agreement in the amount of \$1,175,225 with South Coast Air Quality Management District ("AQMD") for funding to install PV systems at four City facilities, as follows:

- 1) \$284,915 for the Palm Springs Visitors Center
- 2) \$311,680 for Fire Station #3
- 3) \$190,365 for Train Station
- 4) \$388,265 for the James O' Jessie Desert Highland Unity Center

The AQMD funds were awarded to the City through its application in May 2012 under the AB 1318 Mitigation funds associated with the construction and operation of the Sentinal Energy Project Power Plant near Desert Hot Springs.

Subsequently, NAM performed the feasibility analysis and on June 4, 2014, the City Council received a presentation on the results of their analysis of 11 various City facilities. At that time, the City Council approved Amendment No. 1 to the agreement with NAM, in the amount of \$85,000, for development of a Request for Proposals ("RFP") to solicit proposals from the solar industry for design-build of PV systems at the 11 City facilities originally included in NAM's scope of services.

On November 19, 2014, the City Council approved Amendment No. 2 to the agreement with NAM, in the amount of \$12,088, to include the four additional sites funded by the AQMD grant as part of the comprehensive RFP being prepared for PV systems Citywide. The full list of 14 City facilities included in the City's RFP for PV systems included:

- | | |
|------------------------------|------------------------------|
| ❖ Animal Shelter | ❖ Fire Station #4 |
| ❖ Convention Center | ❖ Sunrise Plaza |
| ❖ Community Center | ❖ Tahquitz Creek Golf Course |
| ❖ Demuth Park | ❖ Train Station |
| ❖ Downtown Parking Structure | ❖ Visitor's Center |
| ❖ Fire Station #1 | ❖ Wastewater Treatment Plant |
| ❖ Fire Station #3 | ❖ Unity Center |

On January 21, 2015, the City Council received a presentation on the status of the project, and approved the City's release of the RFP, identified as RFP 03-15, Design-Build of Solar Electric Systems, which was officially released the next day.

On March 19, 2015, the City received 10 formal proposals from the following solar firms by the required deadline to receive proposals in response to the RFP:

- ❖ Baker Electric, Inc.; Escondido, CA
- ❖ BAP Power Corporation, dba Cenergy Power; Carlsbad, CA
- ❖ Borrego Solar; San Diego, CA
- ❖ La Salle Solar Systems, Inc.; Cathedral City, CA
- ❖ NEXtera Energy; Juno Beach, FL
- ❖ Nobell-MD Energy Partners, LLC; Palm Springs, CA
- ❖ Performance Contracting, Inc.; Anaheim, CA
- ❖ SolarCity Corporation; Thousand Palms, CA
- ❖ SunEdison; Belmont, CA
- ❖ SunPower Corporation Systems – Renova Energy Corp; Anaheim, CA

Subsequently, from March through June 2015 an Evaluation Committee reviewed the 10 proposals in terms of financial benefits, proposal package completeness, technical strengths, the amount of solar PV experience and qualifications of the firm and proposed team, the proposed schedule of performance, system aesthetics, implementation approach, and the use of local contractors and local expertise. The type of solar PV system proposed for each of the 14 sites and each site's aesthetic considerations were also taken into account in this analysis.

It is important to note that some solar firms did not propose on all 14 City facilities. Baker Electric proposed solar arrays at all 14 sites, and Borrego Solar proposed solar PV systems at the Convention Center, Sunrise Plaza Complex, Tahquitz Creek Golf Course, and Wastewater Treatment Plant. Cenergy Power and Nobell Energy Solutions proposed solar PV systems only at the Wastewater Treatment Plant, and LaSalle Electric proposed PV systems at all sites except for Fire Station #3.

After thoroughly reviewing all of the proposals submitted, a short-list of three solar firms was selected to present formal interviews conducted on June 11, 2015. The three finalists were:

- ❖ SolarCity Corporation; Thousand Palms, CA
- ❖ SunEdison; Belmont, CA
- ❖ SunPower Corporation Systems – Renova Energy Corp; Anaheim, CA

Final and best offers were originally submitted by the three short-listed solar firms for the City's review, and the evaluations were completed. On July 20, 2015, staff presented its final recommendation to the City Council sub-committee appointed at that time (Lewin/Mills); the sub-committee concurred with staff's recommendation with direction to schedule City Council approval to enter into final contract negotiations with SunEdison and SolarCity to provide design-build services for solar PV systems at the following sites shown in Table 1:

	Selected Vendor	Procurement Type	Power Offset
Animal Shelter	SunEdison	PPA*	64%
Convention Center	SunEdison	PPA*	71%
Demuth Park	SunEdison	Purchase**	91%
Downtown Parking Structure	SunEdison	Purchase**	88%
Fire Station 1	SunEdison	Purchase**	91%
Sunrise Plaza	SolarCity	PPA*	71%
Waste Water Treatment Plant	SolarCity	Purchase***	88%
Unity Center	SunEdison	Purchase**	TBD ¹

*PPA = power purchase agreement (lease)

**Purchase will be via AQMD grant funds

***Purchase will be via WWTP Funds (Fund 420)

Table 1

Not all sites were selected for solar PV systems due to the very marginal benefits of systems proposed at the Demuth Community Center, Fire Station #3 & #4, Tahquitz Creek Golf Course, Train Station and Visitor's Center. It was also necessary to evaluate the direct purchase price of the various solar PV systems to aggregate the total cost of those systems within the available \$1.2 Million AQMD grant.

On September 2, 2015, the City Council authorized staff to proceed with final contract negotiations with SunEdison and SolarCity for design-build services for solar PV systems at the City facilities identified in Table 1. Subsequently, on October 7, 2015, the City Council approved various agreements with SolarCity for design-build services to construct solar PV systems at the City's Wastewater Treatment Plant and Sunrise Plaza.

Separately, staff continued contract negotiations with SunEdison through January 2016, at which time on January 8, 2016, SunEdison submitted notice to the City that it would not honor its pricing submitted in 2015, and provided increased pricing for installation of solar PV systems at the six sites previously awarded to SunEdison. This fact caused staff to reevaluate whether the increased pricing submitted by SunEdison remained the best net financial benefit to the City, prompting staff to request revised Best and Final Offers ("BAFOs") on those sites from the other solar firms, SolarCity and SunPower.

¹ The final solar PV system size was to be determined due to the new HVAC system being installed at the Unity Center Gym.

ANALYSIS:

On the basis of the original pricing for solar PV systems submitted by SunEdison to the City in March 2015, staff recommended and on September 2, 2015, City Council agreed that for the six City facilities listed in Table 1 that SunEdison provided the overall best net financial benefit to the City and authorized staff to proceed with contract negotiations. However, as contract negotiations continued through January 2016, SunEdison would not honor their original pricing and submitted revised pricing. SunEdison's revised pricing significantly decreased the overall net financial benefit to the City (over 25 years) by \$8.6 Million. A comparison of the original and revised SunEdison pricing is included in Table 2.

Facility	Contract Type	SunEdison Original Proposal			25 Year Net Benefit
		Size (kW)	Production (kWh)	Offer	
Animal Shelter	PPA	638.4	1,380,603	\$0.068/kWh	\$4,725,034
Convention Center	PPA	957.6	1,573,806	\$0.077/kWh	\$5,693,472
Demuth Park	Cash	161.7	278,875	\$460,576	\$1,256,154
Downtown Parking Structure	Cash	75.6	117,930	\$255,314	\$456,899
Fire Station #1	Cash	50.4	78,761	\$169,795	\$200,379
Unity Center	Cash	20	31,549	\$118,607	(\$220)

Facility	Contract Type	SunEdison Revised Proposal			25 Year Net Benefit
		Size (kW)	Production (kWh)	Offer	
Animal Shelter	PPA	638.4	1,380,603	\$0.075/kWh	\$155,330
Convention Center	PPA	957.6	1,573,806	\$0.097/kWh	\$3,218,904
Demuth Park	Cash	162.8	167,272	\$663,976	\$177,948
Downtown Parking Structure	Cash	72.4	117,930	\$381,921	\$253,923
Fire Station #1	Cash	48.2	78,761	\$234,295	\$104,884
Unity Center	Cash	36.2	31,549	\$290,951	(\$171,696)

Facility	Contract Type	SunEdison Cost/Benefit Changes			25 Year Net Benefit
		Size (kW)	Production (kWh)	Offer	
Animal Shelter	PPA	No Change	No Change	+\$0.007/kWh	(\$4,569,704)
Convention Center	PPA	No Change	No Change	+\$0.02/kWh	(\$2,474,568)
Demuth Park	Cash	+1.1kW	-111,603 kWh	\$203,400	(\$1,078,206)
Downtown Parking Structure	Cash	-3.2kW	No Change	\$126,607	(\$202,976)
Fire Station #1	Cash	-2.2kW	No Change	\$64,500	(\$95,495)
Unity Center	Cash	+16.2kW	No Change	\$172,344	(\$171,476)

Original Net Benefit	\$12,331,718
Revised Net Benefit	\$3,739,293
Difference:	(\$8,592,425)

Table 2

As a result of the SunEdison's revised pricing, staff requested updated pricing from the other two short-listed firms, SolarCity and SunPower, such that a competitive comparison between all three short-listed firms could be completed. Simply on the basis of the overall revised financial net benefit to the City over 25 years, SunEdison's pricing provided the highest net benefit for five of the six City facilities as noted in Table 3.

Facility	Contract Type	Revised Net Benefit Comparison Between Firms			
		SolarCity	SunEdison	SunPower	Best Offer
Animal Shelter	PPA	\$715,641	\$155,330	\$369,349	SolarCity
Convention Center	PPA	\$3,083,601	\$3,218,904	\$3,090,991	SunEdison
Demuth Park	Cash	\$169,254	\$177,948	Did Not Offer	SunEdison
Downtown Parking Structure	Cash	Did Not Offer	\$253,923	(\$229,789)	SunEdison
Fire Station #1	Cash	(\$293,509)	\$104,884	(\$348,942)	SunEdison
Unity Center	Cash	(\$272,906)	(\$171,696)	(\$251,319)	SunEdison

Table 3

As noted in Table 3, the four solar PV systems to be purchased with cash (through the AQMD grant funds) at Demuth Park, the Downtown Parking Structure, Fire Station #1, and the Unity Center, all have very marginal, or no financial net benefit to the City. On this basis, the City requested and AQMD staff agreed with a concept to assign the \$1,175,225 in AQMD grant funds awarded to the City for the four City facilities, to direct purchase of a solar PV system at the City's Animal Shelter. Thus, on March 22, 2016, the City requested revised BAFOs from all three short-listed firms for the largest size and most efficient solar PV system to be purchased directly for a not to exceed cost of \$1,175,225. On April 12, 2016, the City received revised BAFOs for the Animal Shelter, as summarized in Table 4.

	Size (kW)	Production (kWh)	Construction Cost	Guarantee	Revenue (Bill Savings & Incentives)	Costs (Capital, O&M, etc.)	Net Benefit
SunEdison	501.6	1,114,950	\$1,078,440	\$21,500	\$4,130,070	\$1,379,325	\$2,750,745
SolarCity	429.97	775,663	\$1,173,811	\$60,600	\$3,036,742	\$1,492,164	\$1,544,578
SunPower	234.9	467,815	\$1,145,093	\$0	\$1,892,225	\$1,481,925	\$410,300

Table 4

As shown in Table 4, SunEdison submitted the best offer resulting in the highest net financial benefit to the City, followed by SolarCity, with SunPower submitting an offer resulting with the lowest net financial benefit to the City.

SunEdison Bankruptcy

On April 21, 2016, SunEdison filed for Chapter 11 bankruptcy. The City was officially notified via e-mail from SunEdison as shown here:

From: SunEdison Corporate [mailto:sunedisoncorporate@sunedison.com]
Sent: Thursday, April 21, 2016 9:13 AM
To: Craig Gladders
Subject: Important Business Update from SunEdison

Important Business Update from SunEdison

Craig Gladders
City of Palm Springs

Dear Valued Customer,

Thank you for engaging with SunEdison as you consider your future renewable energy investments. As we strongly value our relationship, I am writing to share an important announcement about our plan to restructure and strengthen SunEdison for the future.

We have made the decision to initiate a chapter 11 restructuring process for SunEdison and certain of our domestic and international subsidiaries in order to address our capital structure.

In the U.S. and elsewhere, we anticipate that work will proceed as planned on our ongoing projects and services will continue. The chapter 11 filing is at the corporate level and the Company is working to minimize the impact to our work at our subsidiaries and the project level.

At this time, we anticipate no changes to our business relationship and your point of contact at the Company will remain the same.

This is a difficult but important step that we believe will place us in an even better position over the long term to continue to deliver outstanding results for our customers and business partners. Companies that file under chapter 11 use the flexibility and protections afforded by the process to implement financial and operational restructurings. Importantly, this is in contrast to chapter 7 of the U.S. Bankruptcy Code, which provides for the liquidation of a business. The court process will allow us to right-size our balance sheet and reduce our debt.

We recognize this has been a challenging time, and I want to assure you that we are committed to working with you as we reorganize and strengthen SunEdison for the future.

We will make every effort to keep you informed of significant developments and notify you of any changes in the ordinary course. We have established a Restructuring Information microsite at www.restructuringupdates.com, which you can check for updates on our progress. We also have established a Restructuring Information line at (855) 388-4575 (or, if you are calling from outside the U.S. or Canada, at +1 (646) 795-6966), which you can call if you have questions.

Thank you again for considering SunEdison, and we look forward to continuing our discussions in the near future.

Sincerely,

Ahmad Chatila
President & Chief Executive Officer

SunEdison Inc., 13736 Riverport Dr. Maryland Heights, MO 63043 | [Unsubscribe](#)

Many news outlets reported this bankruptcy filing of one of the largest solar industry firms in the United States; as an example, an article from the Wall Street Journal is included as **Attachment 1**, noting that SunEdison's shares have lost 99% of their value in the past 12 months. These facts caused staff to request a direct statement from the local SunEdison office, to understand how the Chapter 11 bankruptcy filing would affect the BAFOs recently submitted to the City for the Animal Shelter and Convention Center solar PV systems. On May 2, 2016, the City received a letter from SunEdison indicating that as part of its corporate and financial restructuring, SunEdison would be focusing on their "core markets" with an emphasis on PPAs, and not design-build projects where solar PV systems are purchased directly by the property owner. Pursuant to their letter, SunEdison officially retracted its BAFO for the Animal Shelter; a copy of the SunEdison letter is included as **Attachment 2**. The financial instability of SunEdison is sufficient cause for concern, and staff does not recommend that the City give any further consideration to the remaining BAFO from SunEdison for a solar PV system installation at the Convention Center.

Recommendation

Staff's analysis now focused on which of the two remaining firms provides the best net financial benefit for a solar PV system to be purchased at the Animal Shelter, and for a solar PV system to be operated via PPA at the Convention Center. As noted in Table 4, SolarCity provides the better offer to the City for a solar PV system at the Animal Shelter, and staff is recommending the City Council approve various agreements with SolarCity for that site. As noted in Table 3, the BAFOs submitted by both SolarCity and SunPower for a solar PV system at the Convention Center result in nearly identical net financial benefit to the City over 25 years, with a difference of only \$7,390.

These estimates over 25 years are within the margin of error in the financial analysis completed by NAM, and cause for further review of the specifics of each BAFO, as noted in Table 5.

Firm	Contract Type	PPA Comparison Between Firms - Convention Center			Best Offer
		System Size (kW)	System Production (kWh)	PPA Price per kWh	
SolarCity	PPA	848.16	1,309,002	\$0.078	Yes
SunPower	PPA	878.98	1,720,075	\$0.099	No

Table 5

SunPower has proposed a slightly larger system that generates more power than the system proposed by SolarCity; however, SunPower proposed a higher price of \$0.099/kWh. The price proposed by SolarCity is very competitive at only \$0.078/kWh which is \$0.021/kWh less than SunPower. On this basis, NAM recommends approval of the proposal submitted by SolarCity, as indicated in the letter dated April 29, 2016, included as **Attachment 3**.

Animal Shelter Solar PV System

Staff has negotiated the terms and conditions, including pricing, for SolarCity to design, install, operate, and maintain the Animal Shelter Solar PV System. The initial design and construction will be completed pursuant to a Design-Build contract for a 400.52 kW solar PV system capable of initially producing (beginning in Year 1) a total of 722,940 kWh, which can offset 100% of the typical annual electric load at the Animal Shelter of 646,102 kWh with the balance of over-production net metered with electrical load at Demuth Park. The Design-Build contract provides for a 25-year product warranty on the solar PV modules, a 20-year minimum product warranty on power conditioning equipment, and a 10-year “no-cost repair and component replacement” SolarCity guarantee for repairs and replacement not covered by manufacturer’s warranties. The capital cost for the Animal Shelter Solar PV System remains fixed at \$1,118,523.97. A copy of the Design-Build contract is included as **Attachment 4**.

The conceptual layout for the Animal Shelter Solar PV System is an array of ground-mount solar PV modules as shown in Figure 1:



Figure 1
Animal Shelter Solar PV System

Associated with the Design-Build contract is a Performance Guarantee Agreement guaranteeing the production of electricity produced by the Animal Shelter Solar PV System for a 20-year period, concurrent with the proposed term of the associated Operation and Maintenance Agreement. Pursuant to the Performance Guarantee, SolarCity commits to the following:

If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh generated by the System is less than the Guaranteed kWh, then (SolarCity) will send (City) a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh. (SolarCity) will make that payment within thirty (30) days after the end of the relevant calendar year.

The Performance Guarantee stipulates to the following guaranteed energy production during each 5-year period of the 20-year term of the guarantee, as shown in Table 6:

True Up Term Years	Guaranteed kWh
Years 1-5	3,578,726
Years 6-10	3,490,148
Years 11-15	3,403,763
Years 16-20	3,319,516

Table 6

As the age of the solar PV modules increases, it is anticipated and agreed that the energy production will decrease, as noted in Table 6. The Guaranteed Energy Price by which SolarCity commits to paying the City in the event energy production falls below the amounts identified in Table 6, are identified in Table 7:

True Up Term Years	Guaranteed Energy Price per kWh
Years 1-5	\$0.212
Years 6-10	\$0.246
Years 11-15	\$0.285
Years 16-20	\$0.331

Table 7

The cost of the 20-year Performance Guarantee is a fixed price of \$56,701.03; a copy is included as **Attachment 5**.

Associated with the Design-Build contract and Performance Guarantee Agreement is an Operation and Maintenance ("O&M") Agreement. As the City will own the Animal Shelter Solar PV System, it is critically important that the system be appropriately maintained during its operational life. Therefore, as a requirement of the Performance Guarantee, the O&M Agreement will provide the City with preventive maintenance on all of the solar PV system components on an annual basis for a period of 20-years. The cost of the O&M Agreement is a fixed price of \$5,908.34 (Year 1), escalating to \$10,360.30 (Year 20), for a total cost of \$158,759.22 for the 20-year period; a copy is included as **Attachment 6**.

Convention Center Solar PV System

Staff has negotiated the terms and conditions, including pricing, for SolarCity to design, install, operate, and maintain the Convention Center Solar PV System pursuant to a Power Purchase Agreement ("PPA") for a 848.16 kW solar PV system capable of initially producing (beginning in Year 1) a total of 1,309,002 kWh, which offsets 59% of the typical annual electric load at the Convention Center of 2,205,371 kWh. The PPA is a turn-key contract where SolarCity agrees to fund all costs to design, construct, operate, and maintain the solar PV system for a 20-year period, and where the City agrees to purchase electricity produced by the solar PV system at the fixed rate of \$0.078 per kWh². There are options for the City to purchase the solar PV system at a fixed price of \$1,592,858 in Year 6, or at a fixed price of \$1,442,726 in Year 10. A copy of the PPA is included as **Attachment 7**.

The conceptual layout for the Convention Center Solar PV System is flat roof-mounted solar PV modules that will not protrude over the parapet wall, as shown in Figure 2 and 3:

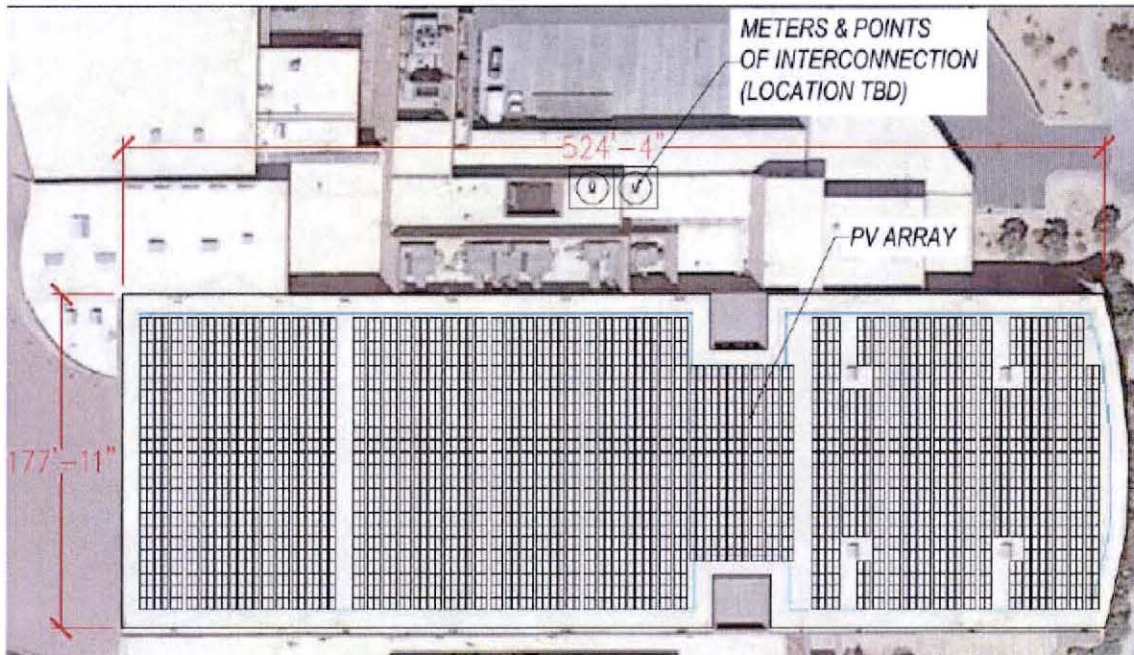


Figure 2
Convention Center Solar PV System

² As a comparison, the City currently pays SCE an average rate of \$0.164 per kWh at the Convention Center; the PPA will lock in a rate of \$0.078 per kWh (52% less than we currently pay) fixed for the 20-year term of the PPA.



Figure 3
Convention Center Solar PV System

Associated with the PPA is a Performance Guarantee Agreement guaranteeing the production of electricity produced by the Convention Center Solar PV System for a 20-year concurrent with the term of the PPA. Pursuant to the Performance Guarantee, SolarCity commits to the following:

If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh generated by the System is less than the Guaranteed kWh, then (SolarCity) will send (City) a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh. (SolarCity) will make that payment within thirty (30) days after the end of the relevant calendar year.

The Performance Guarantee stipulates to the following guaranteed energy production during each 5-year period of the 20-year term of the guarantee, as shown in Table 8:

True Up Term Years	Guaranteed kWh
Years 1-5	6,479,886
Years 6-10	6,319,501
Years 11-15	6,163,086
Years 16-20	6,010,541

Table 8

As the age of the solar PV modules increases, it is anticipated and agreed that the energy production will decrease, as noted in Table 8. The Guaranteed Energy Price by which SolarCity commits to paying the City in the event energy production falls below the amounts identified in Table 8, are identified in Table 9:

True Up Term Years	Guaranteed Energy Price per kWh
Years 1-5	\$0.050
Years 6-10	\$0.060
Years 11-15	\$0.070
Years 16-20	\$0.080

Table 9

The cost of the 20-year Performance Guarantee is \$0, with its cost included in the terms and conditions of the PPA; a copy is included as **Attachment 8**.

Construction Phase Support

Given the highly technical and specialized nature of the solar industry, staff recommends that the City coordinate the construction phase with the selected solar firms with NAM, who can ensure the solar PV systems are design and installed in accordance with the requirements provided in the various contracts approved by Council. If the City Council approves the recommended agreements with SolarCity, staff will submit for approval at a subsequent City Council meeting an Amendment to the agreement with NAM, to administer and coordinate all of the construction phase services associated with the Animal Shelter and Convention Center solar PV systems.

ENVIRONMENTAL IMPACT:

Construction of the Animal Shelter Solar PV System and Convention Center Solar PV System are considered "Projects" as defined by California Environmental Quality Act ("CEQA"). Pursuant to Section 15378(a) of Title 14 of the California Code of Regulations, (the "CEQA Guidelines"), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is (1) an activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, etc.

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of CEQA. The Guidelines are required to include a list of classes of projects which have been determined not to have a significant effect on the environment and which are exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources identified classes of projects that do not have a significant

effect on the environment, and are declared to be categorically exempt from the requirement for the preparation of environmental documents.

With respect to the Animal Shelter Solar PV System, it is proposed to be installed on 1.5 acres of currently vacant land surrounding by urban uses located adjacent to the City's Animal Shelter and Wastewater Treatment Plant, consistent with the applicable general plan designation and all applicable general plan policies, applicable zoning designation and regulations, on a project site that has no value as habitat for endangered, rare, or threatened species, and would not result in any significant effects relating to traffic, noise, air quality or water quality. Pursuant to California Public Resources Code 21084, and Section 15332 of the CEQA Guidelines, the Animal Shelter Solar PV System is considered an "In-Fill Development Project," defined as a Class 32 Categorical Exemption, and construction of the Animal Shelter Solar PV System is considered Categorically Exempt from CEQA. A Notice of Exemption for the Animal Shelter Solar PV System has been prepared and is recommended for approval by the City Council; a copy of the Notice of Exemption is included as **Attachment 9**.

With respect to the Convention Center Solar PV System, it is proposed to be installed on the roof of an existing building. Senate Bill 226, effective January 1, 2012, enacted California Public Resources Code 21080.35, which created a new Categorical Exemption under CEQA for the installation of solar energy systems, including associated equipment, on the roof of an existing building or at an existing parking lot. Therefore, the Convention Center Solar PV System is considered categorically exempt from CEQA, and a Notice of Exemption has been prepared and will be filed with the Riverside County Clerk. A copy of the Notice of Exemption is included as **Attachment 10**.

FISCAL IMPACT:

Animal Shelter Solar PV System

The City currently incurs an annual cost of \$81,476 for electricity purchased for operation of the City's Animal Shelter. This cost is anticipated to escalate to \$156,637 over the next 20 years as a result of continued utility rate increases by SCE, resulting in a total energy cost of \$2,304,102. The Animal Shelter PV System will construct a 400.52 kW solar PV system capable of initially producing (beginning in Year 1) a total of 722,940 kWh, which can offset up to 100% of the typical annual electric load at the Animal Shelter of 646,102 kWh. The balance of over-production will offset additional electric load at the adjacent Demuth Park.

Thus, the anticipated cost to purchase electricity from SCE in Year 1 will reduce from \$81,476 to \$12,820 or less as a result of the power generated by the Animal Shelter Solar PV System. The electrical production from the Animal Shelter Solar PV System will result in an immediate offset (bill savings) of \$68,656 or more in Year 1, with utility bill savings escalating commensurate with anticipated utility rate increases, to an

estimated \$119,544 or more in Year 20, resulting in a total utility bill savings of at least \$1,837,713 at the Animal Shelter.

In addition to direct Animal Shelter savings, the Animal Shelter solar system will also benefit two Demuth Park utility bills. The anticipated cost to purchase electricity from SCE in Year 1 will reduce from \$23,098 to \$11,235 as a result of the power generated by the Animal Shelter Solar PV System. The electrical production from the Animal Shelter Solar PV System will result in an immediate offset (bill savings) of \$11,862 in Year 1, with utility bill savings escalating commensurate with anticipated utility rate increases, to an estimated \$20,018 in Year 20, resulting in a total utility bill savings of \$296,523 at the Demuth Park meters.

The total net benefit from the Animal Shelter solar system resulting from the offset of energy at Animal Shelter and the two Demuth Park meters is estimated at \$2,134,236 over 20 years.

The capital cost to design and construct the Animal Shelter Solar PV System is \$1,118,524 – however, this capital cost is offset by a utility incentive of \$314,929 paid in equal installments over the first 5-year period of the solar PV system's operation, effectively reducing the City's capital cost to purchase this system to \$803,595. This represents an effective cost of \$2 per kW – an excessively low price when compared to other vendors for similar systems.

The cost of the 20-year Performance Guarantee associated with the Animal Shelter Solar PV System is a fixed price of \$56,701.03.

The cost of the O&M Agreement associated with the Animal Shelter Solar PV System is a fixed price of \$5,908.34 (Year 1), escalating to \$10,360.30 (Year 20), for a total cost of \$158,759.22 for the 20-year period. The annual cost to be paid to SolarCity for maintenance of the Animal Shelter Solar PV System will be budgeted with each annual fiscal year budget for the Animal Shelter; payment of the 20-year total cost is not due and payable upon execution of the agreement.

The City is the recipient of a grant in the amount of \$1,175,225 from AQMD for funding to install PV systems at City facilities; these funds have been appropriated in Capital Projects Fund (Fund 261), Account No. 261-4491-50327. Certain costs associated with services provided by NAM associated with development of the RFP solicited to solar firms, and analysis of the proposals received in response to the RFP completed by NAM, have been incurred. A portion of these costs have been paid from the AQMD grant funds received, leaving a current balance of \$1,062,812 available.

Staff recommends that the City Council directly purchase the Animal Shelter Solar PV System using the available AQMD grant funds, supplemented by previously budgeted and available funds in the Capital Project Fund, Account No. 261-9002-50000.

The first annual payment of \$5,908.34 pursuant to the O&M Agreement will be paid from funding budgeted and available for costs associated to the Animal Shelter in the General Fund in Account No. 001-3305-43240 (Other Contractual Services).

The Animal Shelter is located on a 20 acre parcel of land originally purchased by and for the benefit of the Wastewater Treatment Plant in 1989. The Animal Shelter facility is located on approximately 3 acres of this parcel, and the proposed solar panel system will be located on an additional 1 acre of this parcel. It will be necessary for the City to appraise the value of the use of this land and pay the Wastewater Fund lease payments, the cost of which will be paid from the energy savings realized from installation of the Animal Shelter Solar PV System.

Convention Center Solar PV System

Under its contract with SMG, the City pays SMG for operation and maintenance of the City's Convention Center. As part of that contract, SMG currently pays all utility costs, including electrical utility bills from SCE. SMG currently incurs an annual cost of \$326,549 for electricity purchased for operation of the Convention Center. This cost is anticipated to escalate to \$627,791 over the next 20 years as a result of continued utility rate increases by SCE, resulting in a total energy cost of \$9,234,706. The Convention Center Solar PV System will construct a 848.16 kW solar PV system capable of initially producing (beginning in Year 1) a total of 1,309,002 kWh, which offsets 59% of the typical annual electric load at the Convention Center of 2,205,371 kWh. The PPA for the Convention Center Solar PV System is a turn-key contract where SolarCity agrees to fund all costs to design, construct, operate, and maintain the solar PV system for a 20-year period, and where the City agrees to purchase electricity produced by the solar PV system at the fixed rate of \$0.078 per kWh.

Thus, the anticipated cost to purchase electricity from SCE in Year 1 will reduce from \$326,549 to \$136,009 as a result of the power generated by the Convention Center Solar PV System. The electrical production from the Convention Center Solar PV System will result in an immediate offset (bill savings) of \$190,540 in Year 1, with utility bill savings escalating commensurate with anticipated utility rate increases, to an estimated \$338,783 in Year 20, resulting in a total utility bill savings of \$5,158,720.

However, the avoided SCE utility costs occur through the purchase of electricity from SolarCity at the fixed rate of \$0.078 per kWh, which is anticipated to cost \$102,102 in Year 1, and reduces (due to reduced electricity production given degradation of the solar PV modules over time) to an estimated cost of \$92,827 in Year 20, for a total estimated electricity cost of \$1,947,895 over 20 years.

The SCE meter providing power to the Convention Center is currently assigned to SMG, as SMG is the operator of the Convention Center and under the City's contract is responsible for paying the SCE utility bill. However, in order to facilitate approval of the PPA with SolarCity for the Convention Center Solar PV System, the City will be required

to assume responsibility for and pay the SCE utility bill, and the SCE meter for the Convention Center will be assigned to the City. It will be necessary for the City to amend its annual operating budget with SMG for the Convention Center to deduct the current budget paid to SMG for electricity costs, such that these funds are retained by the City to pay SCE directly for incurred electric utility costs, and to pay SolarCity for the incurred costs pursuant to the PPA.

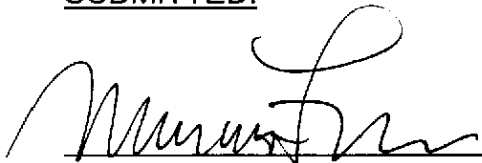
Therefore, upon assuming responsibility for the SCE utility bills at the Convention Center, the City will incur an estimated expense of \$102,102 from SolarCity plus an estimated expense of \$136,009 from SCE for a total estimated annual electricity cost of \$238,111. This total cost is an annual savings of \$88,438 from the total electricity cost currently paid by SMG to SCE for the Convention Center.

The net positive cash flow over the 20-year term of the PPA is \$3,083,601.

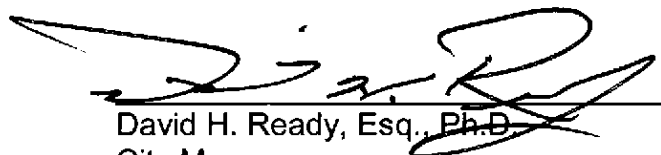
The cost of the 20-year Performance Guarantee associated with the Sunrise Plaza Solar PV System is \$0, and is included in the purchase price of electricity via the PPA.

The expenditure paid to SMG for purchase of electricity at the Convention Center will be reallocated to the General Fund in Account No. 001-2180-42000. This prior expense paid to SMG for their responsibility to pay the SCE utility bills will be significantly reduced by the lower cost of electricity purchased from SolarCity via the PPA, which will be paid from the funds reallocated to Account No. 001-2180-42000.

SUBMITTED:



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. Wall Street Journal Article, 4/21/16
2. May 2, 2016, SunEdison Letter
3. NAM Recommendation Letter
4. SolarCity Animal Shelter Design-Build Contract
5. SolarCity Animal Shelter Performance Guarantee
6. SolarCity Animal Shelter O&M Agreement
7. SolarCity Convention Center Power Purchase Agreement
8. SolarCity Convention Center Performance Guarantee
9. Animal Shelter Solar PV System Notice of Exemption
10. Convention Center Solar PV System Notice of Exemption
11. Resolution

ATTACHMENT 1

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

<http://www.wsj.com/articles/sunedison-files-for-chapter-11-bankruptcy-protection-1461247026>

BUSINESS

SunEdison Files for Chapter 11 Bankruptcy Protection

Solar company had borrowed heavily to buy up wind and solar developers, accumulating a pile of debt that worried investors



Surrounded by high fencing, a 20-megawatt photovoltaic solar-power-generation facility owned by SunEdison in Hemet, Calif. *PHOTO: MIKE BLAKE/REUTERS*

By **PEG BRICKLEY** and **LIZ HOFFMAN**

Updated April 21, 2016 6:44 p.m. ET

Solar-power company SunEdison Inc. filed for bankruptcy protection on Thursday, pledging to curb a debt-fueled global expansion that pushed the company's stock to great heights before fueling its rapid collapse.

The filing caps a dramatic decline for a company that was worth nearly \$10 billion last summer, when it nurtured plans to become a global clean-energy giant. SunEdison used a combination of financial engineering and cheap debt to buy up renewable-power projects around the world before the market turned sour last summer and investors

19

soured on its business model.

SunEdison said it would use the bankruptcy process to reduce its borrowings, which stand at more than \$16 billion, including the debt of two publicly traded subsidiaries, TerraForm Power Inc. and TerraForm Global Inc. Those subsidiaries—separate entities known as yieldcos that buy operating projects from developer SunEdison and pay out cash flow to their shareholders—didn't file for bankruptcy and said in statements that they have sufficient liquidity to continue to operate, though much of SunEdison's value is derived from its controlling stake in them.

SunEdison listed assets of \$20.7 billion in court papers.

“Our decision to initiate a court-supervised restructuring was a difficult but important step to address our immediate liquidity issues,” said Chief Executive Ahmad Chatila. “The court process will allow us to right-size our balance sheet and reduce our debt.”

RELATED

The

- Inside the Fall of SunEdison (<http://www.wsj.com/articles/inside-the-fall-of-sunedison-once-a-darling-of-the-clean-energy-world-1460656000>) (April 14)

company secured commitments for up to \$300 million in loans to see it through bankruptcy from a consortium of existing first- and second-lien lenders.

A Page One article in The Wall Street Journal last week chronicled SunEdison's swift rise and fall. The company and its yieldco units borrowed heavily and sold stock to buy solar installations and wind farms in far-flung locations.

SunEdison spent more than \$18 billion on acquisitions and raised \$24 billion in debt and equity between 2013 and 2016, according to a filing on Thursday with the U.S. Bankruptcy Court in Manhattan.

“At its core, [SunEdison's] business is a ‘deal-making’ one,” Patrick Cook, a senior SunEdison official, said in the filing.

The company's ambitious growth under Mr. Chatila eventually caught up to it when markets turned sour last summer. Shares tumbled, lenders balked and cash dwindled. SunEdison failed to close many of its signed deals, including the \$1.9 billion takeover of Vivint Solar Inc. and the \$700 million buyout of Latin America Power.

The company's shares have lost 99% of their value in the past 12 months.

The Securities and Exchange Commission and the Justice Department are investigating, among other things, whether SunEdison was honest with investors about the depth of its financial woes as its shares were tumbling, according to SunEdison's regulatory filings and people familiar with the matter.

SunEdison is slated to make its first appearance in bankruptcy court Friday, where it will ask Judge Stuart M. Bernstein for permission to pay employees, among other routine bankruptcy requests.

SunEdison also is expected to ask the judge to appoint an independent investigator, known as an examiner. Such requests are common in bankruptcy, but they are typically made by a company's creditors.

Write to Peg Brickley at peg.brickley@wsj.com and Liz Hoffman at liz.hoffman@wsj.com

WHAT TO READ NEXT...



SPORTS

How Millennials Ended the Running Boom



BUSINESS

Appaloosa Management Calls for Probe of SunEdison



BUSINESS

Failed Latin America Power Deal Spawns More Woes for SunEdison



POLITICS AND POLICY

Obama: White House Contest, Trump's Words Must Be Taken Seriously

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ATTACHMENT 2



May 2, 2016

Craig L. Gladders, C.P.M.
Procurement & Contracting Manager
Procurement and Contracting Office
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA, 92262

MEMO: SunEdison Ability to Execute Solar Projects

Dear Mr. Gladders,

We appreciate the opportunity to provide you and the City of Palm Springs with additional clarity on our financial status and ability to successfully deliver solar to the City.

On April 21, SunEdison, Inc. and certain subsidiaries filed voluntary petitions for reorganization under chapter 11 of the U.S. bankruptcy code. SunEdison Government Solutions, LLC (the company providing the offer to the City) was not included in the chapter 11 filing.

The filing will allow SunEdison to reduce debt, strengthen its balance sheet, and focus on core markets. Distributed generation projects in the U.S., such as this project for the City, have long been central to our business, and will continue to be a top priority for the company.

As part of the restructuring process, we have secured commitments for \$300 million of new capital in the form of debtor-in-possession ("DIP") financing. This financing will enable us to continue our business operations through the chapter 11 process while we make the necessary operational changes to emerge a better, stronger company.

As part of the restructuring, we are focusing on our core markets, with an emphasis on power purchase agreements (PPAs) in North America. In this new operating environment, we continue to see very strong demand from financiers for our PPA projects; they value long-term contracts with high-quality counterparties such as the City. We are currently in discussions with multiple blue-chip financiers about financing our 100MW California portfolio, and interest from the financial community has actually increased since the filing.

The Convention Center PPA project fits very well within our renewed focus on PPA projects, and we remain committed to delivering the project. Design-build projects, such as the Animal Shelter site, have historically been a much smaller portion of our business than PPAs. With the renewed focus on our core PPA business, the company has made the decision to take a step back from design-build projects. We therefore respectfully retract our BAFO for the Animal Shelter site.



SunEdison is 100% committed to delivering a successful Convention Center project for the City. Although we understand that a chapter 11 filing creates many questions, we are very confident that we have the capability to deliver the project. To that end, we are willing to include contractual commitments to assure the City that the project will move forward:

1. Commitment to arrange financing within 90 days of contract signing. The single most important factor in solar projects is being able to secure financing for the project. With a strong financier on board, you can be assured that your project can continue successfully. SunEdison will arrange financing for the project within 90 days of contract signing.
2. Firm development milestones. Contractual milestones require SunEdison to demonstrate progress, and give the City remedies if the schedule is not met. SunEdison will commit to the following project development milestones in the contract:
 - a. Signature + 60 Days: Onsite diligence complete, interconnection application submitted
 - b. Signature + 75 Days: Preliminary design documents for City review
 - c. Signature + 105 Days: Design Complete
 - d. Signature + 135 Days: Permits, issue NTP
3. Construction bonding. Bonding the construction of the project ensures that once construction starts, it will continue to completion. These bonds take away risk of having unfinished projects impacting the site. SunEdison will provide the City with performance and payment bonds for the full value of construction.

As is typical with all solar financings, once the project is operational and permanent financing has closed, the term financier of the system assumes all responsibility for fulfilling all requirements of the contract. At this point, the contract is backed by the strength of the financier, and the City is fully protected from any concerns with SunEdison.

We look forward to working with the City of Palm Springs to successfully deliver this important project. Please contact Nate Butler at (619) 318-3504 or nbutler@sunedison.com with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Youneszadeh".

Sam Youneszadeh
Managing Director

ATTACHMENT 3



April 29, 2016

2451

Mr. Craig Gladders, C.P.M.
 City of Palm Springs
 3200 East Tahquitz Canyon Way
 Palm Springs, CA 92262

Re: Solar Recommendation for Animal Shelter and Convention Center

Dear Mr. Gladders:

Newcomb Anderson McCormick (NAM) would like to formally provide our solar vendor recommendation for the Animal Shelter and Convention Center solar projects. In June 2015, NAM recommended the City of Palm Springs (“City”) choose SunEdison as their design build contractor to install solar projects at seven sites. The Animal Shelter and Convention Center were the most attractive solar projects of these seven sites. Unfortunately, SunEdison was forced to provide revised pricing in January 2016 due to economic hardships. This pricing was higher than the originally proposed pricing. The City, via amendments to the original solar RFP, sought best and final offerings from the shortlisted solar vendors in order to re-evaluate the seven solar sites. During this process, SunEdison officially filed for bankruptcy; therefore, NAM would not recommend considering SunEdison for selection to install solar projects at any City sites.

The remaining solar vendors did not provide economically viable pricing for the sites other than Animal Shelter and Convention Center. Fortunately, the economics for the Animal Shelter and Convention Center are sound, based on the vendor’s updated proposals. NAM does not recommend moving forward with solar projects at Demuth Park, Downtown Parking Structure, Fire Station #1, Tahquitz Creek Golf Course, or the Unity Center, due to high solar costs and negative economic returns.

The system size, cost, and financial return for Animal Shelter and Convention Center from the two remaining shortlist vendor are summarized in the tables below. Ultimately, the City requested direct purchase pricing for Animal Shelter and PPA pricing for Convention Center.

Animal Shelter:

	Size (kW)	Production (kWh)	Construction Cost	Guarantee	25 Year Revenue (Bill Savings & Incentives)	25 Year Costs (Capital, O&M, etc.)	25 Year Net Benefit
SolarCity	429.97	775,663	\$1,173,811	\$60,600	\$3,036,742	\$1,492,164	\$1,544,578
SunPower	234.9	467,815	\$1,145,093	\$0	\$1,892,225	\$1,481,925	\$410,300

Convention Center:

	Size (kW)	Production (kWh)	PPA Cost	20 Year Revenue (Bill Savings)	20 Year PPA Costs	20 Year Net Benefit
SolarCity	848.16	1,309,002	\$0.078/kWh	\$5,158,720	\$2,075,119	\$3,083,601
SunPower	878.98	1,720,075	\$0.1185/kWh	\$6,532,102	\$3,441,111	\$3,090,991

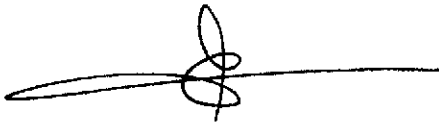
SolarCity provided a higher net benefit solar system for the Animal Shelter. Both SolarCity and SunPower provided solar systems with nearly equivalent net benefits for the Convention Center. However, SolarCity's PPA pricing is significantly lower than SunPower's.

NAM formally recommends selecting SolarCity for both the Animal Shelter and Convention Center for the following reasons:

- Excellent project net benefits
- Strong local presence
- Relevant reference projects
- Previously negotiated purchase and PPA contracts

Please feel free to request any additional information from NAM regarding this recommendation.

Sincerely,



John M. Newcomb
Principal

ATTACHMENT 4

**DESIGN/BUILD AGREEMENT
DESIGN, INSTALLATION AND COMMISSIONING
PALM SPRINGS ANIMAL SHELTER SOLAR/PHOTOVOLTAIC SYSTEM**

This Design/Build Agreement for the Design, Installation and Commissioning of a Solar/Photovoltaic System at the Palm Springs Animal Shelter, ("**Agreement**") is made ____ day of ____, 2016, ("**Effective Date**"), by and between the City of Palm Springs, a California charter city and municipal corporation, ("**City**"), and SolarCity Corporation, a Delaware corporation, ("**Design-Builder**"), collectively referred to as the "**Parties**" or individually as a "**Party**." The metered solar facility at the Palm Springs Animal Shelter as set forth herein is referred to as the "**System**."

RECITALS:

A. Through this Agreement, City intends to contract for the engineering, system design, fabrication and installation of photovoltaic solar systems that will result in the supply of energy and generate energy savings to City. The Design/Build of the System is exempt from formal competitive bid projects pursuant to City's municipal affair powers as a charter city, and Government Code sections 5956 et seq.

B. The Design-Builder shall engineer, design, and construct the System pursuant to the terms of this Agreement, and all other associated documents and requirements referred to herein, which are incorporated herein by this reference.

C. Installation of the System is undertaken as a design/build activity which is not subject to formal competitive bid legal requirements. The Design-Builder has been chosen through a non-competitive invitation for proposals. The Design-builder will subsequently solicit bids from sub-contractors to complete all work on the System. Accordingly, any bid protest claim procedure is not applicable to this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the Parties agree as follows:

1. Scope of Work. Design-Builder shall furnish to City the labor, equipment, material, and services set forth in this Agreement and as otherwise reasonably required to complete all design, engineering, construction, testing and interconnection of the System, along with all appurtenances, fixtures, and furnishings, described in Exhibit A-1 "System Description," and Exhibit A-2 "Technical Specifications and Requirements," attached hereto and incorporated herein by this reference, and collectively referred to as the "**Project**", "**Work**", or "**Services**". All work shall be in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, other than liens arising as a result of City's failure to pay any amounts when due under this Agreement.

2. Completion.

2.1. Substantial Completion. Design-Builder shall complete Substantial Completion of the Project within 365 days after the Notice to Proceed ("**Guaranteed Substantial Completion Date**"). "**Substantial Completion**" as used in this Agreement means that point at which each of the following has been achieved in accordance with the

requirements of this Agreement and each of the documents described in Section 4 below (the "**Contract Documents**");

2.1.1. All mechanical work of every kind necessary to make the System usable for its intended function is actually complete and any and all fire/life safety systems are completely installed and fully operational;

2.1.2. All of the electrical systems and all other infrastructure necessary to achieve interconnection of the System with City's facilities and the public electrical utility's electricity transmission system are fully energized and functioning properly, including, without limitation, accurate functioning of all related electricity meters; and

2.1.3. Design-Builder has performed the appropriate testing to confirm, and Southern California Edison ("**Utility Company**") has orally confirmed through inspection, that the System is capable of operating safely in accordance with all applicable laws, codes, rules and regulations.

Notwithstanding the achievement of Substantial Completion, the City shall not be required to accept the System until Final Acceptance.

2.2. **Punch List.** Upon achieving Substantial Completion with respect to the System, City shall provide Design-Builder with a list of items still outstanding which are necessary to complete the System in accordance with this Agreement and the related specifications and to achieve Final Completion ("**Punch List**"). The Parties shall meet and negotiate in good faith and shall promptly agree on and execute an amended Punch List, if necessary, to be completed by the Design-Builder before Final Completion is achieved.

2.3. **Final Completion.** "**Final Completion**" shall occur after Substantial Completion, when each of the following has been achieved in accordance with the requirements of the Contract Documents:

2.3.1. all Punch List items are completed;

2.3.2. all required training as detailed in Exhibit A-2 has occurred; all documentation as detailed in Exhibit A-2 has been provided to City, including, without limitation, all warranties, final record drawings in Auto-CAD format that incorporates all as-built revisions and comments and operation and maintenance manuals;

2.3.3. Testing, defined as testing of all systems comprising the System in accordance with the requirements of this Agreement, the results thereof meeting the requirements set forth herein, and acceptance by City of the successful testing, which acceptance shall not unreasonably be withheld; and

2.3.4. Receipt of the Permission to Operate letter from the Utility Company.

2.4. **Final Acceptance.** Upon achievement of Substantial Completion or Final Completion, as applicable, Design-Builder shall deliver notice thereof to City. City shall inspect the Work and notify Design-Builder that either (a) Substantial Completion or Final Completion has been achieved or (b) the Work has not been completed, stating in

reasonable detail the reasons for such determination. In either event the applicable notice from City shall be delivered to Design-Builder as soon as reasonably practicable, but in no event later than ten (10) business days after Design-Builder provided such notice to City. If City does not deliver such notice within such time period, Substantial Completion or Final Completion, as applicable, shall be deemed achieved. If City notifies Design-Builder within the applicable time period that the Work has not been completed, Design-Builder shall take action to promptly complete the relevant Work and shall deliver to City a notice specifying in detail status of completion of the Project. This procedure shall be repeated until the relevant Work shall have been accepted or deemed accepted by City. Final Completion shall be deemed achieved on the date ("**Final Completion Date**") that the City Council issues a formal written acceptance of the System to Design-Builder ("**Final Acceptance**"), which acceptance shall not be denied, conditioned or delayed for any reason other than the failure of Design-Builder to complete the Work described herein for Final Completion. Upon the issuance of the Final Acceptance, the City shall file a notice of completion in Riverside County in the standard form issued by the Riverside County Recorder.

2.5. Extension of Guaranteed Substantial Completion Date. The Guaranteed Substantial Completion Date shall be extended day for day by any delay caused by (i) City's breach of this Agreement, (ii) any delay by City in reviewing or approving any matter herein that is subject to City's review or approval or issuing any permit or notice to proceed, (iii) Design-Builder's suspension of Work resulting from late payment or non-payment by City, (iv) a Force Majeure Event, or (iv) a change order.

3. Liquidated Damages. Time is of the essence for all Work under this Agreement. In accordance with Government Code section 53069.85, Design-Builder agrees that it shall pay to City the sum of \$383 per day as liquidated damages for each and every day's delay of Substantial Completion beyond the Guaranteed Substantial Completion Date, as extended. Such Liquidated Damages shall be deducted from payments due to or to become due to the Design-Builder. It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Section as liquidated damages are reasonable, considering the damages that City would sustain, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by City. Payment of liquidated damages is the exclusive remedy for delays by Design-Builder under this Agreement. Further, provided Design-Builder (a) has not otherwise materially breached the Agreement; and (b) is paying the assessed liquidated damages, the failure to achieve Substantial Completion Date by the Guaranteed Substantial Completion Date shall not be a breach of this Agreement.

4. Submittal of Documents. Design-Builder shall not commence the Work under this Agreement until the Design-Builder has submitted and City has approved all herein required documentation, including but not limited to the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- (i) Signed Agreement
- (ii) Non-collusion Affidavit
- (iii) Prevailing Wage Certification
- (iv) Workers' Compensation Certification
- (v) Insurance Certificates and Endorsements
- (vi) Performance Bond

- (vii) Payment Bond
- (viii) Project Schedule
- (ix) System Description
- (x) Scope of Work
- (xi) Solar Operation and Maintenance Agreement
- (xii) Performance Guarantee Agreement

The above-referenced Contract Documents shall be presented executed by the Design-Builder to City by the time set for the City's City Council formal approval of this Agreement.

5. Compensation. As full and complete compensation for the Work and all other obligations of the Design-Builder contemplated herein, City shall pay to the Design-Builder in the amount of **ONE MILLION ONE HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED TWENTY THREE DOLLARS AND NINETY SEVEN CENTS (\$1,118,523.97)** ("**Total System Price**"). Exhibit A-3 sets forth the specific components of the System, including all components to be constructed as part of the System, and the "lump sum" amount for all work to be completed, including but not limited to all labor, materials, equipment and supplies. Such amount shall not be increased without the City Council's formal approval of a change order.

6. Expenses. City shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing services for City except as otherwise provided in this Agreement.

7. Payment. The Total System Price shall be paid in periodic partial payments in accordance with this section.

7.1. Processing of Progress Payments; Retention. Each month while Design-Builder is providing the Work under this Agreement, City shall pay to Design-Builder a sum equal to ninety-five percent (95%) of the value of the Work performed and the value of equipment and material integrated into the System, up to the last day of the previous month, less aggregate of previous payments (the "**Progress Payments**"). As the Design-Builder is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from City, to assure that there will be no delays, payment by City for stored material shall be made only in unusual circumstances where City specifically approves the payment in writing. The remaining five percent (5%) of such amounts shall be held as the Retention Amount. Design-Builder shall prepare a monthly invoice for the amounts due each month under this Agreement and submit such invoice together with all applicable information required under this Agreement with respect thereto. City shall forthwith approve the progress payment and pay such invoices within thirty (30) days after receipt thereof.

7.2. Waiver and Release upon Payment. Each Progress Payment shall be conditioned upon Design-Builder providing to City with the corresponding Progress Payment Application in the form customarily provided by Design-Builder a conditional waiver and release of claims for payment upon payment from the Design-Builder and each of its subcontractors and materials suppliers in the form required by Civil Code Section 8132, covering all sums requested in such Progress Payment Application, and an unconditional waiver and release of claims for payment from each party, in the form required by Civil Code Section 8132, covering sums disbursed pursuant to the most recently preceding Progress Payment Application. Failure to provide either a condition

waiver and release, or unconditional waiver and release shall result in the subject sums being in dispute, and thus withheld from payment.

7.3. Estimated Progress Payments. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Design-Builder in the form customarily provided by Design-Builder certified by the Project Inspector and QA Engineer, or any other approved representative of City, and filed before the fifth (5) Day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Design-Builder or any Surety from such work or from enforcing each and every provision of the Agreement and Construction Documents. City shall have the right subsequently to correct any error made in any estimate for payment.

7.4. Corrective Work and Progress Payment. Design-Builder shall not be entitled to payment for non-conforming work performed. City may withhold from the Progress Payments the estimated value of any amount in dispute between City and Design-Builder. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. City shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a Stop Payment Notice.

7.5. Title to Delivered Materials. Risk of loss and title to new materials and/or equipment for the Work shall vest in City upon Final Acceptance. Risk of loss for such new material and/or equipment for the Work shall remain with Design-Builder until incorporated into the Work and Final Acceptance; however, no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work, and Design-Builder shall keep an accurate inventory of all said materials and/or equipment in a manner reasonably satisfactory to City or its authorized representative. Design-Builder shall maintain all course of construction and other insurance as necessary to protect said equipment and Work. Nothing in this section shall limit the Design-Builder's liability for repair, maintenance or replacement of any material and/or equipment for the Work resulting from any breach of this Agreement or pursuant to any warranty or guaranty.

8. Independent Design-Builder. Design-Builder, in the performance of this Agreement, shall be and act as an independent contractor. Each Party understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the other Party, and are not entitled to benefits of any kind or nature normally provided employees of the other Party and/or to which the other Party's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including, sales taxes, unemployment insurance, social security and income taxes with respect to Design-Builder's employees. Design-Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

9. Standard of Care. Design-Builder shall perform its obligations under this Agreement using the generally accepted standard of care, skill and diligence as would be provided by, in the case of engineering services, a prudent engineering firm, and in the case of construction or

procurement services, by a prudent construction firm, in each case experienced in supplying solar power projects in the same community under the same or similar circumstances, the covenants, terms and conditions of this Agreement, and all applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code (Title 24) of the California Code of Regulations, the Utility Company Interconnection Requirements, City's Design Guides and Technical Specifications, and all other federal, state, and local jurisdictions having authority ("**Standard of Care**"). Design-Builder represents and warrants that it is fully experienced in projects of the nature and Scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the requirements set forth in this Agreement, and shall be subject to City's general right of inspection and supervision to secure the satisfactory completion thereof.

10. Originality of Services. Design-Builder agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to City and/or used in connection with this Agreement. ("**Documents and Data**"), are instruments of service and shall remain the property of Design-Builder. Design-Builder shall provide City hard copies and electronic copies of all such Documents and Data, upon the request of City. Design-Builder grants City a nonexclusive, irrevocable royalty-free license to use the Documents and Data in connection with the System, provided that Design-Builder has not terminated this Agreement as a result of City's breach. City agrees to defend, indemnify and hold Design-Builder harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses (including reasonable attorneys' fees and costs of defense), accruing or resulting to any persons, firms, or other legal entities, on account of any damages or losses to property or persons, including death or economic loss, arising out of (i) the modification of the Documents and/or Data or (ii) the use of the Documents and/or Data for any project or facility other than the Project. Design-Builder shall defend, indemnify and hold harmless City and its officers, directors, employees and agents (excluding construction contractors) from all Liability relating to any infringement of any intellectual property, including any patent, invention, design, trademark or copyright, associated with the Documents and/or Data.

11. Notice to Proceed. After the Contract Documents are submitted, City shall provide a Notice to Proceed to Design-Builder for design work, at which time Design-Builder shall proceed with the design work. After the design of the System is approved by City, City shall provide a Notice to Proceed to Design-Builder at which time Design-Builder shall proceed with the construction Work.

12. Site Conditions.

12.1. Site Examination. Within 30 days after the Effective Date, Design-Builder will conduct detailed examinations of the Site and confirm all measurements, specifications and conditions affecting the Work to be performed at the Site. Following these detailed site examinations (which will include underground surveys as necessary), Design-Builder shall either (a) provide written notification to City that it warrants that it has made Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Design-Builder's ability to protect existing surface and subsurface improvements, or (b) request specific changes to the Services, Work, Guaranteed Substantial Completion Date, and Total System Price that are required in light of such examinations. If City does not agree with these changes, either Party may terminate the Agreement within five (5) Business Days of receipt of such request, without liability to either Party. Thereafter, no claim for allowance of time

or money will be allowed as to any other undiscovered condition on the Site. Notwithstanding the foregoing, should either Party become aware of any Site condition that was not reasonably foreseen as a result of such examination, it shall notify the other Party and there shall be an equitable adjustment to the Total System Price to reflect the increased costs associated therewith.

12.2. Disclosures. Design-Builder acknowledges that it has been provided with information on soils conditions in and with the Request for Proposals from City, on file in City offices, and acknowledges that any and all conditions disclosed therein, expressly or implicitly, are known to Design-Builder (collectively, the "**Disclosures**"). Except as set forth in this Section 12, Design-Builder shall have no right to, and shall not make any Claim or other demand for additional compensation, other than as described within the Alternates expressly set forth in Exhibit A-2, which the Parties agree to utilize in the event that the basic foundation system(s) proposed would be deemed inadequate or imprudent according to sound engineering judgment consistent with the Standard of Care under Section 9. In the event that the soils conditions are substantially and materially different from the Disclosures, and neither the basic foundation systems nor the Alternate foundation systems would be deemed adequate or prudent according to sound engineering judgment consistent with the Standard of Care under Section 9, either Party may terminate by written notice all further Work for convenience as further provided herein, and eliminate from the Scope of Work, that specific site, or City may negotiate with Design-Builder in good faith to identify an alternate location for, or other alternatives for a solar photovoltaic array of equal or better characteristics (and the Work and the Total System Price shall not exceed the Alternate foundation systems costs if the Parties agree to any such alternative). For such purposes, Design-Builder agrees, acknowledges that it knows and assumes, and is deemed to know and assume, that the conditions at the Sites comport with the least benign conditions disclosed, expressly or implicitly, in the information on soils conditions in and with the Request for Proposals from City all consistent with the Standard of Care under Section 9.

12.3. Disclaimer of Warranty. City does not warrant the soils or geological conditions at the Site. Any information on the soils and geotechnical conditions of the Site is provided for informational purposes, only, and is expressly understood to reflect the professional judgment of the entity that prepared it based on limited sampling and observation and may not be comprehensive or accurate in any of its findings or implications. City does not warrant the soils or geological conditions of the Site and Design-Builder is fully responsible to ascertain all Site conditions for the purposes of determining construction means and methods and costs of construction of the System.

12.4. Existing Utilities. Design-Builder shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of Design-Builder to determine, within reason, the exact location of all utilities. Design-Builder shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities.

13. Materials. Design-Builder shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

13.1. Anti-Trust Claim. Design-Builder agrees to pass-through, on a pro-rata basis, any applicable awards received pursuant to causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials provided to City pursuant to the Agreement.

13.2. Substitutions. No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of City.

14. Equipment and Labor. Design-Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized City representative indicated in the Work specifications attached hereto.

15. Warranty/Quality. Unless a longer warranty is called for elsewhere in this Agreement, the Design-Builder, manufacturer, or their assigned agents shall guarantee their respective workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from the Final Completion Date; provided, however, that this minimum one-year warranty period for manufacturers or their agents shall not apply to System components that are not customarily warranted, such as, but not limited to, washers, screws, copper wire and other minor components, which Design-Builder shall be responsible for repairing and replacing pursuant to the Solar Operation and Maintenance Agreement described in Section 15.3 below. For the avoidance of doubt, such warranty from Design-Builder applies solely to its Work, not, for example, products incorporated into the System, which shall have such warranties as may be provided by the applicable manufacturers of such products. All workmanship warranted by Design-Builder and merchandise warranted by the applicable manufacturers must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards, including but not limited to California Solar Initiative Program requirements.

15.1. PV Modules. PV modules used in this project shall have a 25-year product warranty from the manufacturer from the date of sale. Such warranties shall be deemed assigned to City as of the Final Completion Date.

15.2. Power Conditioning Equipment. Power Conditioning Equipment, including inverter(s), shall have a 20-year minimum product warranty from the manufacturer from the date of sale. Such warranties shall be deemed assigned to City as of the Final Completion Date.

15.3. Other System Components. Under the terms of a separately executed Solar Operation and Maintenance Agreement, Design-Builder shall be responsible for providing no-cost repair and component replacement not covered by the manufacturers of the components of the System for a period of 10 years after the Final Completion Date on all equipment, systems and controls necessary to ensure PV production at the performance level set forth in the separately executed Performance Guarantee Agreement.

15.4. Exclusions from the Warranties. The warranty provided by Design-Builder does not apply to any repair, replacement or correction required due to the following:

- 15.4.1. Materials and equipment covered by manufacturer warranties;
- 15.4.2. Someone other than Design-Builder or its approved service providers installed, removed, re-installed or repaired the System;
- 15.4.3. Destruction or damage to the System or its ability to safely produce energy not caused by Design-Builder or its approved service providers while servicing the System (e.g., a tree falls on the System);
- 15.4.4. City's failure to perform, or breach of, City's obligations hereunder (such as if City modifies or alters the System);
- 15.4.5. City's breach of this Agreement including being unavailable to provide access or assistance to Design-Builder in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- 15.4.6. Any Force Majeure Event;
- 15.4.7. A power or voltage surge caused by someone other than Design-Builder including a grid supply voltage outside of the standard range specified by the utility;
- 15.4.8. Shading from foliage that is new growth or is not kept trimmed to its appearance on the date the System was installed;
- 15.4.9. Any System Failure not caused by a System defect (e.g., such as making roof repairs);
- 15.4.10. Theft of the System; or
- 15.4.11. City's failure to reasonably cooperate with the person performing the repairs when repairs are being made;

15.5. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The express warranties set forth in this Agreement shall be the exclusive warranties provided by Design-Builder. The remedies set forth in this Agreement shall be City's sole and exclusive remedies.

16. Correction of Errors. Design-Builder shall perform, at its own cost and expense and without reimbursement from City, any work necessary to correct errors or omissions which are caused by the Design-Builder's failure to comply with the standard of care required herein.

17. Trench Shoring. If this Agreement is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Design-Builder must submit and obtain City acceptance, which shall not be unreasonably withheld, conditioned or delayed, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or

trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

18. Excavations Over Four Feet. This Section 18 shall pertain to all Work comprising the excavation of any trench or trenches four (4) feet or more in depth.

18.1. Plan. If applicable, Design-Builder shall submit to City for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. Design-Builder's plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that Design-Builder's registered civil or structural engineer certifies that the plan complies with the current and applicable CAL-OSHA Construction Safety Orders, or stating that Design-Builder's registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders. No excavation of any such trenches shall be commenced until said plan has been accepted by City or by the person to whom authority to accept has been delegated by City. All shoring submittals shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittals shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes. Nothing in this Section shall relieve Design-Builder of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection. Pursuant to Labor Code section 6705, nothing in this Section shall impose tort liability upon City, its Board, or any of its employees.

18.2. Process. In relation to digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Design-Builder shall comply with the following requirements and include similar provisions in any contract for the Project which involves digging trenches or other excavations:

18.2.1. Design-Builder shall promptly, and before the following conditions are disturbed, or if disturbed, shall immediately cease such disturbance, notify City, in writing, of any:

18.2.1.1. Material that the Design-Builder or any Subcontractor or Consultant believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

18.2.1.2. Subsurface or latent physical conditions at the Site differing from those indicated;

18.2.1.3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work.

18.2.2. City shall promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste and, notwithstanding Section 12, cause a decrease or increase in the Design-Builder's

cost of or the time required for performance of any part of the work, shall issue a change order under the procedures described in this Agreement.

18.2.3. Except as otherwise provided in this Agreement, in the event that a dispute arises between City and the Design-Builder, whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of or time required for performance of any part of the work, the Design-Builder shall not be excused from any scheduled completion date but shall proceed with the Work. Notwithstanding the foregoing, the Design-Builder shall retain any and all rights and remedies provided by this Agreement.

19. Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work which results in an increase in cost to City shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order approved by the City Council. The foregoing notwithstanding, the Design-Builder shall continue to perform its Work under the Agreement with respect to all undisputed portions of the Work and shall not cause a delay of the Work by virtue of the inability of City and Design-Builder to agree upon the extent of any adjustment to the Guaranteed Substantial Completion Date and/or the Total System Price on account of such change, except to the extent such Work may be affected by an unforeseen Site condition. City acknowledges that Design-Builder shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work resulting from an unforeseen Site condition, and the cost thereof shall be added to or deducted from the amount of the Total System Price by fair and reasonable valuations mutually agreed by the Parties in writing, unless either Party terminates this Agreement in accordance with Section 12. Design-Builder specifically understands, acknowledges, and agrees that City shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Total System Price by fair and reasonable valuations mutually agreed by the Parties in writing.

19.1. Adjustment to Total System Price. Adjustments to the Total System Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

19.1.1. Change Order Mutual Agreement. By negotiation and mutual written agreement, on a lump sum basis, between City and Design-Builder on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change.

19.1.2. Change Directive per Determination by City. City shall notify Design-Builder in writing of its determination of the actual and necessary costs incurred by the Design-Builder on the basis of Design-Builder's records. Design-Builder shall be deemed to have accepted City's determination of the amount of adjustment to the Total System Price on account of a Change to the Work unless Design-Builder shall notify City, in writing, not more than fifteen (15) business days from the date of City's written notice, of any objection to City's determination. In the event that Design-Builder provides such notice, Design-Builder shall proceed to complete the Work as directed by City, pending resolution of the dispute regarding adjustment to the Total System Price in accordance with section 23.

19.1.3. Basis for Adjustment of Total System Price. If Changes in the Work require an adjustment of the Total System Price, the basis for adjustment of the Total System Price shall be as follows:

19.1.3.1. Labor. Design-Builder shall be compensated for the actual costs, without markup, of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Design-Builder in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

19.1.3.2. Materials and Equipment. Design-Builder shall be compensated for the actual costs, without markup, of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are obtained for materials necessarily used in the performance of Changes, they shall be credited to City. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Design-Builder, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of City, the costs asserted by the Design-Builder for materials and/or equipment in connection with any Change is excessive, or if the Design-Builder fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and City's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. City may elect to furnish materials and/or equipment for Changes to the Work, in which event the Design-Builder shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

19.1.3.3. Construction Equipment. Design-Builder shall be compensated for the actual cost, without markup, of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If

Construction Equipment is not moved to the Site by its own power, Design-Builder will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work.

19.1.3.4. Overhead. In determining the cost to City and the extent of increase to the Total System Price resulting from a Change adding to the Work, the allowance for overhead (including home office and field overhead), general conditions costs and profit (hereinafter "**Change Order Overhead**") associated with the Change shall not exceed 15% of the direct actual costs for performance of the Change.

19.1.3.5. If a Change to the Work reduces the Total System Price, no profit, general conditions or overhead costs shall be paid by City to the Design-Builder for the reduced or deleted Work.

19.1.4. Required Documentation. Design-Builder agrees to provide City with all material information requested to substantiate the cost of the change order and to inform City whether the Work will be done by the Design-Builder or a subcontractor. Design-Builder shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Design-Builder in a calendar day, Design-Builder shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Design-Builder shall require that each such Subcontractor maintain records in accordance with this Section. Each daily record maintained hereunder shall be signed by Design-Builder's Superintendent or Design-Builder's authorized representative. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by City upon request.

19.2. Adjustment to Guaranteed Substantial Completion Date. The Guaranteed Substantial Completion Date may be extended or reduced by change order if the performance of such Change necessitates such extension or reduction. Design-Builder shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work.

20. Claims. If Design-Builder shall claim compensation for any reason, including, without limitation, changes to the in the Work or Services, extensions of time, and/or damages sustained by Design-Builder for which it may seek recovery from City ("**Claim**"), Design-Builder shall promptly after discovering the occurrence giving rise to the Claim, make and deliver to City a written statement of the amount of the Claim, the first occurrence giving rise to the Claim, and a description of the occurrences, events and bases for the Claim ("**Notice of Claim**"). Design-

Builder shall file with City an itemized statement of all details and the amount of the Claim within twenty (20) business days of delivery to City of the Notice of Claim.

21. Workers. Design-Builder shall take reasonable steps at all times to enforce proper discipline and good order among Design-Builder's employees, Subcontractors, Consultants, and all other invitees to the Site and shall not to its actual knowledge employ or allow the employment on the work of any unfit person or anyone not skilled in work assigned to Design-Builder.

21.1. Design-Builder shall remove from the Site any person in the employ of Design-Builder or any Subcontractor or Consultant whom City may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of City.

21.2. Design-Builder shall take all reasonable steps necessary to ensure that any employees of Design-Builder or any of its Subcontractors or Consultants report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). Design-Builder shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by Design-Builder or by City. Design-Builder shall impose these requirements on its Subcontractors, suppliers, and other invitees. Design-Builder shall execute, under penalty of perjury, the certification of a drug-free workplace and certification of a tobacco-free workplace on the forms provided herewith provided herewith.

22. Wages. This Project is subject to both the California Prevailing Wage Law and the federal Davis-Bacon prevailing wage law. Design-Builder shall be responsible for complying with the requirements of both legal structures, as set forth herein, including payment of the higher wage rates and other compensation required by either the California Prevailing Wage Law and the federal Davis-Bacon prevailing wage law.

22.1. The California Prevailing Wage Law.

22.1.1. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of City has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

22.1.2. Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term "per diem wages" is used herein.

22.1.3. Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.

22.1.4. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

22.1.5. Each worker of Design-Builder and any of its subcontractors engaged in work on the System shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between Design-Builder or any subcontractors and such workers.

22.1.6. Design-Builder shall, as a penalty to City, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design-Builder.

22.1.7. City shall provide Design-Builder with current prevailing wage rates, in writing. City shall provide Design-Builder with current prevailing wage rates, in writing. Design-Builder shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.

22.1.8. Any worker employed to perform work on the System which is not covered by any classification available in City office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

22.2. Record Of Wages Paid: Inspection. Pursuant to Labor Code § 1776, Design-Builder stipulates to the following:

22.2.1. Design-Builder and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.

22.2.2. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Design-Builder on the following basis:

22.2.2.1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.

22.2.2.2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of City, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.

22.2.2.3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Design-Builder, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Design-Builder.

22.2.2.4. Design-Builder shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

22.2.2.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Design-Builder awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

22.2.2.6. Design-Builder shall inform City of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

22.2.2.7. In the event of noncompliance with the requirements of this Section, Design-Builder shall have ten (10) days in which to comply

subsequent to receipt of written notice specifying in what respects Design-Builder must comply with this Section. Should noncompliance still be evident after such 10-day period, Design-Builder shall pay a penalty of TWO HUNDRED (\$200.00) to City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

22.2.2.8. The responsibility for compliance with this Section shall rest upon Design-Builder.

22.3. The Davis-Bacon Prevailing Wage Law. Design-Builder shall take all actions necessary to comply with the following requirements of the Federal Davis-Bacon Act, set forth herein per 29 Code of Federal Regulations section 5.5. In each case that the term "contractor" is stated within this Section, it shall mean the Design-Builder. In each case that the term "subcontractor" is stated within this Section, it shall mean any and all subcontractors to the Design-Builder, and each such subcontractor's subcontractor, through all tiers. Notwithstanding the foregoing, in each case that the term "contractor or subcontractor" is stated within this Section, it shall mean the Design-Builder and any and all subcontractors to the Design-Builder, and each such subcontractor's subcontractor, through all tiers.

22.3.1. Minimum wages.

22.3.1.1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that

the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

22.3.1.1.1. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

22.3.1.1.1.1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

22.3.1.1.1.2. The classification is utilized in the area by the construction industry; and

22.3.1.1.1.3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

22.3.1.1.2. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

22.3.1.1.3. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will

notify the contracting officer within the 30-day period that additional time is necessary.

22.3.1.1.4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

22.3.1.2. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

22.3.1.3. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

22.3.2. Withholding. Client shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, City may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

22.3.3. Payrolls and basic records.

22.3.3.1. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her

correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Design-Builders employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

22.3.3.1.1. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Design-Builders and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own

records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

22.3.3.1.2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

22.3.3.1.2.1. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

22.3.3.1.2.2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

22.3.3.1.2.3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

22.3.3.1.3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

22.3.3.1.4. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

22.3.3.2. The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records

upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

23. Hours Of Work.

23.1. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Design-Builder stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Design-Builder or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Design-Builders in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

23.2. Design-Builder shall pay to City a penalty of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of the Work by Design-Builder or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by Design-Builder is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

23.3. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to City, unless otherwise agreed to by the parties.

23.4. Construction work shall be accomplished on a schedule consistent with the normal and reasonable practices of Design-Builder and in compliance with applicable ordinances.

24. Apprentices

24.1. All apprentices employed by Design-Builder to perform Work shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed to perform construction work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

24.2. When Design-Builder or any subcontractor under Design-Builder, in performing any construction Work, employs workers in any apprenticeable craft or trade, Design-Builder and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving Design-Builder or Subcontractor under the

apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Design-Builder or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

24.3. "Apprenticeable craft or trade" as used in Labor Code § 1777.5 and this Section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

24.4. Design-Builder, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other Design-Builders in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Design-Builder employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other Design-Builders do, but where the trust fund administrators are unable to accept the funds, Design-Builders not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. Design-Builder or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.

24.5. The responsibility of compliance with Labor Code § 1777.5 and this Section for all apprenticeable occupations is with Design-Builder.

24.6. The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

25. Design-Builder Supervision. Design-Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

26. Safety and Security. Design-Builder is responsible for maintaining safety in the performance of this Agreement. Design-Builder shall be responsible to ascertain from City the rules and regulations pertaining to safety and security. Design-Builder shall have the responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement and the Services provided hereunder.

27. Clean Up. Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

28. Access to Work. City representatives shall at all time during normal business hours of Design-Builder have access to the Work wherever it is in preparation or in progress; provided, however, that City shall provide prior written notice requesting access and comply with all safety guidelines and rules of Design-Builder and its contractors. Design-Builder shall provide safe and proper facilities for such access.

29. Protection of Work and Property. Design-Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Design-Builder, without special instruction or authorization from City, is permitted to act at his reasonable discretion to prevent such threatened loss or injury.

30. Termination.

30.1. For Convenience by City. City may, at any time, with or without reason, terminate this Agreement upon five (5) Business Days prior notice to Design-Builder. Upon such termination, City shall pay Design-Builder an amount equal to (i) the total amount required to compensate Design-Builder only for the Work and Services rendered to the date of termination and all reasonable costs incurred by Design-Builder as a result of such termination (including in the termination of subcontracts, vendor agreements and in demobilization), which cannot be mitigated or eliminated through commercially reasonable efforts by Design-Builder, plus (ii) an amount equal to 15% of the balance of the Work and Services for lost anticipated profit ("**Termination Payment**"). Written notice by City shall be sufficient to stop further performance of services by Design-Builder. Notice shall be deemed given when received by the Design-Builder. Design-Builder shall provide a final invoice for the Termination Payment, in reasonable detail with supporting documentation, which shall be paid by the City within 15 Business Days after receipt.

30.2. With Cause by Either Party. Either Party (the "**Non-Defaulting Party**") may terminate this Agreement upon giving of written notice of intention to terminate for a Default Event caused by the other Party (the "**Defaulting Party**"). "**Default Event**" means any of the following events:

30.2.1. failure of the Defaulting Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within five (5) days following receipt of written notice from the Non-Defaulting Party of such failure to pay;

30.2.2. failure of the Defaulting Party to perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting

Party initiates such cure with the thirty (30) day period and diligently continues such cure to completion;

30.2.3. if any representation or warranty of the Defaulting Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

30.2.4. City (as the Defaulting Party) loses its rights to occupy and enjoy the Premises prior to Final Acceptance;

30.2.5. The Defaulting Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Defaulting Party which has a similar effect; or

30.2.6. City (as the Defaulting Party) prevents Design-Builder from performing the Work or Services or materially interferes Design-Builder's performance of such Work or Services.

30.3. Remedies for City. In the event of termination by City for a Default Event by Design-Builder, City may secure the required services from another party. If the documented reasonable expenses, fees, and costs to City to complete the Services and Work exceed the cost of providing the Work or Service pursuant to this Agreement, upon receipt of an invoice and reasonable supporting documentation from City, Design-Builder shall pay the excess reasonable expenses, fees, and/or costs to City within fifteen (15) Business Days of receipt of City's notice of these expenses, fees, and/or costs.

30.4. Remedies for Design-Builder. In the event of termination by Design-Builder for a Default Event by City, City shall pay the Termination Payment, which shall be invoiced by Design-Builder, and paid by City, in accordance with the provisions set forth in Section 30.1 above.

30.5. In no event shall any delay in Substantial Completion arising during the period from issuance of a notice of termination for a Default Event by Design-Builder through the time such condition or violation shall have ceased or been cured be excused, nor shall Design-Builder be relieved of liability for Liquidated Damages relating thereto.

30.6. Upon termination, Design-Builder shall provide City with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

30.7. Each Party's rights and remedies under this Agreement shall be cumulative and in addition to any other or further rights or remedies provided in law or at equity.

31. Representations and Warranties.

31.1. General Representations and Warranties. Each Party represents and warrants to the other the following:

31.1.1. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is a valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

31.1.2. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

31.2. City's Representations and Warranties. City represents and warrants to Design-Builder the following:

31.2.1. Other Agreements. Neither the execution and delivery of this Agreement by City nor the performance by City of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which City is a party or by which City, the Site or the Facility is bound.

31.2.2. Accuracy of Information. All information provided by City to Design-Builder, as it pertains to the Site or the Facility's physical configuration, City's planned use of the System or Facility, is accurate in all material respects.

31.2.3. City Status. City is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

31.3. Design-Builder's Representations and Warranties. Design-Builder represents and warrants to City the following:

31.3.1. Conflict of Interest. Design-Builder acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall Design-Builder enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. Design-Builder warrants that Design-Builder has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

31.3.2. Covenant Against Discrimination. In connection with its performance under this Agreement, Design-Builder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Design-Builder shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age,

marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

32. Force Majeure.

32.1. Excuse. Subject to Section 32.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to meet the Guaranteed Substantial Completion Date) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

32.1.1. such Force Majeure Event is not attributable to fault or negligence on the part of that Party;

32.1.2. such Force Majeure Event is caused by factors beyond that Party's reasonable control; and

32.1.3. despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

32.2. "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming to be excused by the event, including, without limitation, subject to this Section:

32.2.1. acts of Nature such as storms, floods, lightning and earthquakes, range or forest fires and objects striking the earth from space (such as meteorites);

32.2.2. sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

32.2.3. theft, vandalism, accidents, or construction related power interruptions and mechanical moves;

32.2.4. War (declared or undeclared), terrorism, riot, acts of a public enemy or other civil disturbance;

32.2.5. strike, walkout, lockout, work stoppage, slow-down or lock-out or other significant labor dispute;

32.2.6. unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent such unavailability is the result of the Party claiming to be excused by the Force Majeure Event to have exercised reasonable diligence)

Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

“Force Majeure Event” does not include economic hardship of either Party.

32.3. Conditions. In addition to the conditions set forth in Section 32.2 above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

32.3.1. provides prompt notice of such Force Majeure Event, as soon as reasonably practicable after determining the existence of the Force Majeure Event, to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

32.3.2. exercises all reasonable efforts to continue to perform its obligations under this Agreement;

32.3.3. expeditiously takes reasonable action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;

32.3.4. exercises all reasonable efforts to mitigate or limit damages to the other Party; and

32.3.5. provides prompt notice, as soon as reasonably practicable following knowledge of the cessation, to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that impacts Purchaser’s ability to make payment.

32.4. Termination Due To Force Majeure Event. In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force Majeure Event, the other Party may terminate this Agreement, without liability of either Party to the other (except for amounts accrued but unpaid), upon thirty (30) days written notice after the Force Majeure Event.

33. Indemnification and Limitations of Liability.

33.1. General. Design-Builder agrees to defend, indemnify and hold harmless City, and its elected and appointed officers, employees, and agents (the “**Indemnified Parties**”) from every claim or demand made, and every liability, loss, personal injury, damage, expense, including but not limited to reasonable attorney’s fees (“**Liabilities**”), to the extent caused by or arising out of the negligent acts or omissions of, or the willful

misconduct of the Design-Builder in connection with this Agreement; provided, however, that nothing herein shall require the Design-Builder to indemnify any Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party.

33.2. Third-Party Claims. Design-Builder, at its own expense, cost, and risk, shall defend any and all third party claims, actions, suits, or other proceedings, including any and all appeals thereof, that may be brought or instituted against and Indemnified Party on account of or founded upon any cause, damage, or injury for which Design-Builder is responsible under Section 33.1 ("**Third-Party Claim**") and shall pay or satisfy any final and non-appealable judgment that may be rendered against an Indemnified Party in any action, suit or other proceedings as a result thereof. Design-Builder shall select counsel to provide such defense, subject to acceptance by City, which acceptance shall not unreasonably be withheld. City may, however, select separate counsel if both Parties are defendants in the Third-Party Claim and such defense or other form of participation is not reasonably available to the Design-Builder. The Design-Builder shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. City may also, at the sole cost and expense of the Design-Builder, assume the defense of any Third-Party Claim if the Design-Builder fails to assume the defense of the Third-Party Claim within a reasonable time. Design-Builder shall not settle any Third-Party Claim unless it has obtained the prior written consent of City, which consent shall not be unreasonably withheld or delayed. The Design-Builder shall have no liability for any Third-Party Claim for which notice of such Third-Party Claim is not provided by the City promptly after its receipt of information regarding the possibility of such Third-Party Claim or the commencement of such Third-Party Claim, if the failure to give timely notice prejudices the Design-Builder.

33.3. Limitations on Liability.

No Consequential Damages. Except with respect to indemnification for third party claims pursuant to Section 33 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.

34. Insurance.

34.1. The Design-Builder shall procure and maintain at all times it performs any portion of the Services the following insurance:

34.1.1. General Liability. Five Million Dollars (\$5,000,000) combined single limit per occurrence and Five Million Dollars (5,000,000) in the aggregate, for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability, including Products Liability and Completed Operations coverage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit. Total limits required may be satisfied with an

umbrella or excess liability policy

34.1.2. Automobile Liability Insurance. One Million Dollars (\$1,000,000) combined single limit per occurrence for any automobile that shall protect the Design-Builder and City from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Design-Builder.

34.1.3. Workers' Compensation and Employers' Liability Insurance. For all of the Design-Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Design-Builder shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease and \$1,000,000 disease – policy limit.

34.1.4. Professional Liability (Errors and Omissions). One Million Dollars (\$1,000,000) for errors and omissions as appropriate to profession of engineer designing photovoltaic system, coverage to continue through completion of construction plus two years thereafter.

34.1.5. Builder's Risk Insurance. On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, theft, sonic disturbance, flood, collapse, wind (excluding Tier 1 counties), fire, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full replacement value of each installation at each Site.

34.1.6. Umbrella or Excess Liability. Four Million Dollars (\$4,000,000) per occurrence and aggregate to meet the policy limit requirements of the required policies if Design-Builder's underlying policy limits are less than required. Any Umbrella Liability Insurance Policy shall protect Design-Builder, City, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

34.1.7. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

34.1.7.1. For the general liability and automobile liability policies:

34.1.7.1.1. City, and its elected and appointed officials, employees, and agents ("**Additional Insureds**") are to be covered as additional insureds as respects liability arising out of activities

performed by or on behalf of Design-Builder; instruments of Service and completed operations of the Design-Builder; premises owned, occupied or used by Design-Builder; or automobiles owned, leased, hired or borrowed by Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Blanket additional endorsements will be acceptable;

34.1.7.1.2. For any claims related to the projects, Design-Builder's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Design-Builder's insurance and shall not contribute with it. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

34.1.7.1.3. Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

34.1.7.2. Design-Builder shall furnish City with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by Client before Work commences and in accordance with requirements contained herein.

34.1.8. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

35. Payment and Performance Bonds. (a) Design-Builder shall provide to City, in substantially the form attached hereto as Exhibit A-4, a Payment (Labor and Material) Bond, and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the contract price stated herein. The surety shall be admitted to issue bonds in the State of California and shall otherwise be acceptable in quality as reasonably determined by the City; (b) the payment and performance bonds shall be submitted and approved by the office of the City Attorney prior to scheduling the agreement for formal vote and approval by the City Council of the City. Notwithstanding any language to the contrary in this Agreement, any performance bond shall cease one (1) year from the Final Completion Date. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond the one-year term of the performance bond shall continue to be guaranteed solely by Design-Builder under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements. Any payment bond will cease at the termination of any time required by law. Neither the payment bond nor the performance bond is applicable to any specified performance guarantee.

36. Permits and Licenses. Design-Builder and all Design-Builder's employees or agents shall secure and maintain in force, at Design-Builder's sole cost and expense, such permits and

licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.

37. Assignment. The rights, burdens, duties, or obligations of either Party pursuant to this Agreement shall not be assigned by the Design-Builder without the prior written consent of the other Party.

38. Subcontractors. If Design-Builder shall subcontract any part of this Agreement, Design-Builder shall be fully responsible to City for acts and omissions of its subcontractor and of persons either directly or indirectly employed by it. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and City.

39. Compliance with Laws. Design-Builder shall observe and comply with all applicable rules and regulations of the governing board of City and all federal, state, and local laws, ordinances and regulations. Design-Builder shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Design-Builder observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Design-Builder shall notify City, in writing, and, at the sole option of City, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing. If Design-Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without such prior notification and approval of City of the violation, Design-Builder shall bear all costs arising therefrom.

39.1. Design-Builder hereby acknowledges that City's representative, the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Design-Builder's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Design-Builder shall be liable for any delay caused by its non-compliant Work.

40. Audit. Design-Builder shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Design-Builder transacted under this Agreement. Design-Builder shall, at City's cost, retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Design-Builder shall permit City, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that City shall give reasonable prior notice to Design-Builder and shall conduct audit(s) during Design-Builder's normal business hours, unless Design-Builder otherwise consents.

41. Environmental Attributes and Energy Credits. City shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the System and each of its component parts. This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

41.1. All Environmental Incentives associated in any way with the solar electricity generating facilities provided by this Agreement ("**Generating Facilities**"). "**Environmental Incentives**" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under

federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the forgoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.

41.2. All rights and interests in performance based incentive payments to be made under the California Solar Initiative.

41.3. All reporting rights and the exclusive rights to claim responsibility for the delivery of the energy from the Generating Facilities.

41.4. All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.

41.5. All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.

41.6. All "renewable energy credits," as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities.

41.7. The proceeds of any and all other incentive programs available in relation to the System.

42. Disputes. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration, provided that the following dispute resolution steps shall first be exhausted:

42.1. Meet and Confer. An officer of each Party shall conduct a meet and confer conference to mutually resolve any conflict or alleged default. The meet and confer conference may be called by either Party and shall be held within 10 days from the date that a request for the conference is made. If the meet and confer conference does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the non-binding mediation process set forth below;

42.2. Non-Binding Mediation. The Parties shall mutually call for a non-binding mediation process to be conducted under the auspices to of the judicial mediation services of "JAMS" in its Riverside County Offices. The Parties shall arrange to have the mediation conducted within 60 days from date of the call for mediation. If the non-binding mediation process does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the binding arbitration process set forth below;

42.3. Binding Arbitration. Each arbitration, including the selecting of the arbitrator, will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures. If JAMS is unavailable, the AAA will be the administering body. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either Party can initiate a binding arbitration proceeding by filing the necessary forms with JAMS after first utilizing the meet and confer process and non-binding mediation process described above. Venue for any arbitration brought under this Agreement shall be proper in Riverside California. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement. In the event of any arbitration arising from or related to this Agreement, the prevailing Party will be entitled to recovery of all reasonable costs incurred, including court costs, attorneys' fees, experts' fees and other related expenses.

43. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

City

City of Palm Springs
3200 E Tahquitz Canyon Way
Palm Springs, CA 92262
ATTN: City Manager
EMAIL: citymanager@palmsprings-ca.gov
FAX: (760) 323-8332

Design-Builder

SolarCity Corporation
3055 Clearview Way
San Mateo, CA 94402
Attn: Contracts
Email: Contracts@solarcity.com
FAX: (650) 638-1029

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

44. Governing Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which City's administrative offices are located.

45. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

46. Waiver. Any delay or forbearance in enforcing, or failure to enforce any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

47. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

48. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

49. Cooperation. The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

50. Binding Contract. This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

51. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

52. No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

53. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

54. Counterparts. This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.

55. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

56. Entire Contract. This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

57. City Approvals. All approvals to be provided by City under this Agreement shall be based on prudent solar power industry practices applicable to the design, construction and/or operation of photovoltaic solar systems similar to the System and shall not be unreasonably withheld, conditioned or delayed; provided, however, that if City approval is not provided within twenty (20) business days after a submission for approval, such approval shall be deemed granted.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have executed and entered into the Agreement as of the date first written above.

ATTEST:

**CITY OF PALM SPRINGS, a California
charter city and municipal corporation**

By: _____
James Thompson
City Clerk

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

SOLARCITY CORPORATION, a Delaware corporation

Corporations require two notarized signatures: One signature **must** be from the Chairman of Board, President, or any Vice President. The second signature **must** be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: Notarized Signature of Chairman of Board, President
or any Vice President

By: Notarized Signature of Secretary, Asst. Secretary,
Treasurer, Asst. Treasurer or Chief Financial Officer

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

Information regarding Design-Builder:

Proper Name: _____
License No.: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____

 Limited Liability Company
 Other: _____

Employer Identification and/or Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, Client requires the Design-Builder to furnish the information requested in this section.

Exhibit A-1

System Description

The Animal Shelter Solar Project is designed as a fixed-tilt ground mount system, with a 25 degree tilt, facing due south. The designed system size is 400.52 kW. This design assumes that the soils at this site are viable for installing said solar structures, though the site has a sunken area leading to some grading issues. The design utilizes 1,292 Tier 1 modules mounted at an 180° azimuth angle. The PV modules are wired into 1000Vdc strings of 19 modules, and strings are fed into string inverters located on the solar ground mount's columns. The outputs of multiple inverters are then combined into a single AC load center. The outputs of the load centers will be placed in conduit and trenched to a final AC combining switchgear. This output of this switchgear will be routed through EMT conduit to the final point of interconnection. The final location of this switchgear will be determined by a final site audit.

Design Overview Summary

Animal Shelter	
kW _{DC}	400.52 kW
Module Model	"Poly 310 W"
Module Power (W)	310
No. of Modules	1,292
Module Racking, Method and Supplier	Ground Mount Fixed-Tilt, RBI
Tilt Angle	25°
Azimuth Angle	180°
Inverter Model	Fronius Symo 24
Inverter Power (kW)	24 kW
Inverter Output Voltage	480V
No. Inverters	14
kWh/year 1	722,940
kWh/kW year 1	1,805
20 year kWh	13,792,180
Key Design Assumptions	<ul style="list-style-type: none">• DECK DAS• Soils will support driven-pier racking system• 480V Line Side Tap style Interconnection

Project Layout

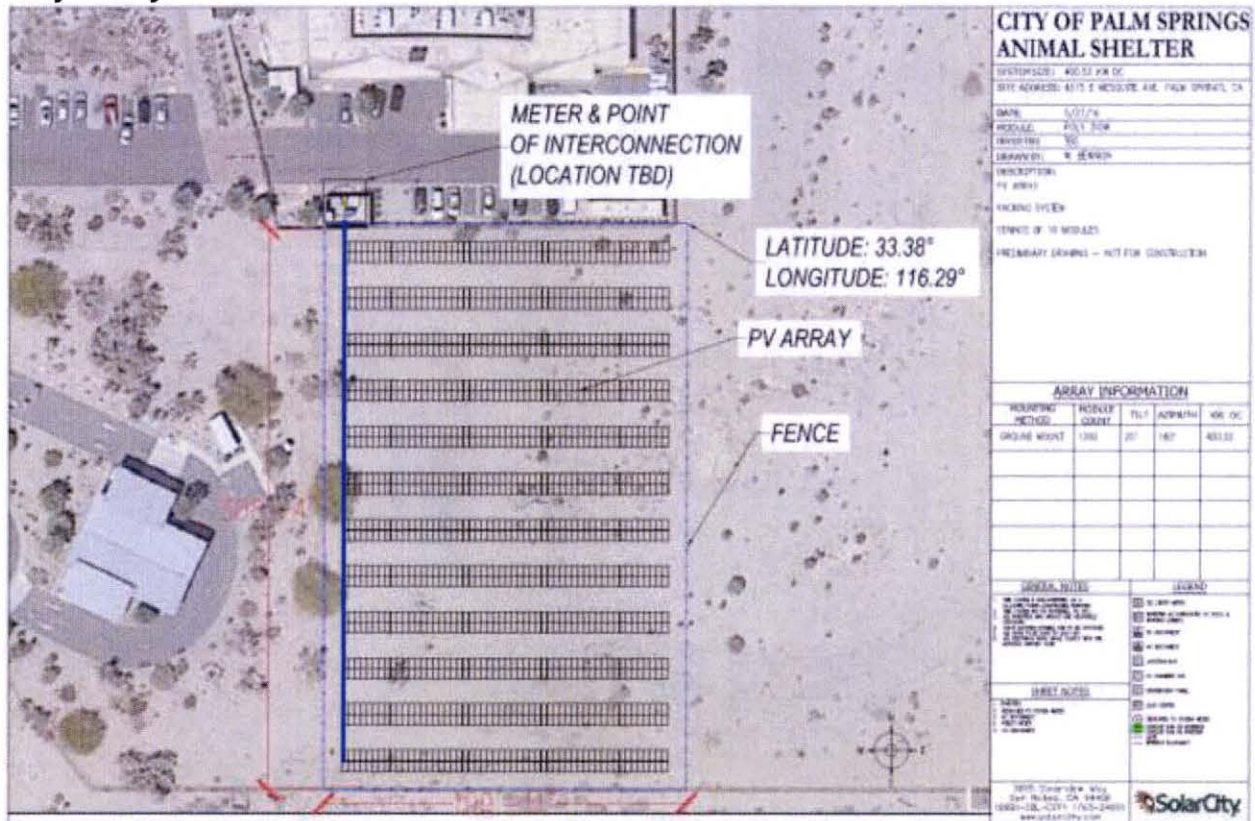


Exhibit A-2

**SCOPE OF WORK
AND REQUIREMENTS**

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1.0 PROJECT MANAGEMENT

Design-Builder shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall manage all design, procurement, construction, and commissioning phases of the Project. The construction of PV systems shall be accomplished by Design-Builder with an on-site construction management team. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the City.

2.0 PROJECT SCHEDULE

A Project Schedule is to be prepared and submitted to the City within 14 days of Agreement execution. The City will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the City may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities, dependencies, and sequencing of tasks. In particular, Design-Builder shall include City review of submittals on the Critical Path. The Project Schedule shall describe all elements of project design, equipment procurement, construction and commissioning, and shall be submitted in electronic format (MS Project or Primavera P6). Adobe Acrobat is not acceptable. The schedule shall also reflect the requirement that construction activities must be coordinated to minimize impacts on normal operations at each site, including ongoing construction activities.

Sufficient information shall be shown on the Project Schedule to enable proper control and monitoring of the Work. The Project Schedule shall show the intended time for starting and completing each activity; the duration of each activity; submittal and approval times; design; delivery of materials, equipment and software; all testing; and other significant items related to the progress of the Work. The Project Schedule shall include a CPM network diagram of sufficient detail to show how Mandatory Milestones are intended to be met. If a schedule submitted by Design-Builder includes changes affecting the achievement of Mandatory Milestones, Design-Builder should clearly identify and justify those changes.

Design-Builder is encouraged to phase the Work in a way that supports efficient and effective delivery of design and build services. The following Mandatory Milestones shall be reflected in the schedule and where applicable, represents the dates upon which each milestone is to be achieved for all sites in the Agreement.

Project Schedule – Animal Shelter Solar Project

- Contract Award: May 1, 2016
- Contract Execution: June 16, 2016
- Notice to Proceed: June 23, 2016
- Site Surveys: July 5-8, 2016
- System Design and Permit Start: July 25, 2016
- Permit in Hand: October 30, 2016
- Materials Procurement: November 3-7, 2016
- Site Preparation: November 10-15, 2016
- Construction Start: November 17, 2016
- Construction Complete: January 16, 2017
- Utility Permission To Operate: March 13, 2017
- Testing Period: March 14, 2017
- Final Completion: April 14, 2017
- CSI Deadline (with extension): October 20, 2017

3.0 SUBMITTALS

Design-Builder shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

Agreement Submittals

Submittal	Submittal Date	RFP Section
I. System Design		5.0
a. System Design Documentation	At each design milestone	5.1
b. Warranties	At Construction Documents milestone	5.5.15
c. Testing Plan	At Construction Documents milestone	7
d. Training Plan	At Construction Documents milestone	10
e. Power production modeling	At Construction Documents milestone	
II. Procurements and Construction		6.0
a. Quality Assurance / Quality Control (QA/QC) Plan	30 days before commencement of construction	6.3
b. As-built Documentation	After completion of Proving Period	6.1
III. Testing		7.0
a. Acceptance Test Results	After Acceptance Test	7.1
b. Startup Test Results	After Startup Test	7.2
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	7.3
d. Proving Period Report	30 days after System Startup	7.3
IV. Training		10.0
a. Training Materials	30 days before Training Session	10.0
b. Monitoring Manual	30 days before Training Session	5.5.14
c. Operations & Maintenance Manual	30 days before Training Session	8.5

4.0 Solar Incentives

On behalf of the City, Design-Builder shall prepare and submit to the applicable agencies all applications and documentation necessary for all available energy production incentives (e.g., CSI, SGIP, etc.). This shall include actions necessary to ensure compliance with the SCE's net metering program and all interconnection agreements and related documents for the City participation and utilization of the benefits of that program. Contractor shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the City in satisfying the requirements of the Rebate Program. Design-Builder shall be responsible for providing updated documentation to Rebate Program administrators throughout the project, as required by rules of the relevant Rebate Programs. All incentives shall be paid to the City and used to offset the cost of the project.

5.0 SYSTEM DESIGN

5.1 Design Review Process/Phases

The City will review and approve design documentation based on the requirements in this RFP. Additional documents may be requested by the City as needed. The precise organization and format of the design submittals shall be agreed upon by Design-Builder, and the City prior to the first design submission. The City will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Design-Builder shall provide additional detail, as required, at each successive stage

of the Design Review. Design-Builder shall not order equipment and materials until Schematic Design submittals have been approved. Design-Builder shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The City will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Design-Builder shall not enter a subsequent design phase without the approval of the City.

Design-Builder shall be held solely responsible for obtaining approvals from the City, including revising designs as necessary until they are given approval by the City and all other required entities and organizations. A description of requirements for each design phase is provided below. System design shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations for construction projects of jurisdictions with authority over the City. Design-Builder is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. System designs must take into account City aesthetic issues and not conflict with any current City operations.

5.1.1 Schematic Design

Design-Builder shall prepare Schematic Design documents consisting of drawings and other documents illustrating the scale and relationship of Project components, including but not limited to, schematic design studies, site utilization plans, PV array layouts, a shading analysis, electrical single-line diagrams, equipment lists and bills of material, and equipment cut sheets or specifications.

5.1.2 Design Development

Design Development documents shall consist of elevations, cross sections, and other drawings and documents necessary to depict the design of the Project. This submittal shall include architectural, structural, geotechnical, mechanical and electrical design documents and equipment specifications to illustrate the size, character, and quality of the Project and demonstrate that it meets the performance specifications defined in this RFP. The Design Development documents shall represent 100% of the intended scope for the Project.

5.1.3 Construction Documents

Design-Builder shall prepare Construction Documents (CDs) depicting the detailed construction requirements of the Project. CDs shall conform to all applicable governmental, regulatory, and code requirements, and all pertinent federal, state, and local permitting agencies. The CDs shall show the work to be done, as well as the materials, workmanship, finishes, and equipment required for the Project. CDs shall comply with and illustrate methods to achieve the performance specifications of this RFP. CDs shall be stamped by the engineer of record and any other required engineering disciplines.

5.2. Design-Builders' License Classification

In accordance with the provisions of California Public Contract Code §3300, the City requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Contractor License (B) and Electrical Contractor License (C-10). It shall be acceptable for a Respondent that does not possess a C-10 License to list a Subcontractor with a C-10 License. A Solar Contractor License (C-46) is desired in addition, but not mandatory.

5.3. Design Submittals

Design-Builder shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the City. Each submittal package shall include, at a minimum, the required elements that convey in sufficient detail for each phase of the design, the necessary documentation as follows:

- Site Layout Drawings
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Fire Access Lane Details (For the parking lot.)
- Single-Line Diagrams
- Network Connection Diagrams
- Architectural Drawings
- Mechanical Drawings
- Geotechnical Drawings
- Manufacturer's Cut Sheets
- Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Design-Builder shall include adequate time for City review and approval of submittals, as well as re-submittals and re-reviews. Minimum City review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

5.5. Technical Requirements

5.5.1 General Considerations

All documentation and components furnished by Design-Builder shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the City and all applicable industry codes and standards. Reference is made in these specifications to various standards under which the Work is to be performed or tested. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Southern California Edison (SCE) Interconnection Requirements, and all other federal, state, and local jurisdictions having authority.

5.5.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Electronic Industries Association (EIA) Standard 569
- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- National Electric Code (NEC)
- Insulated Power Cable Engineers Association (IPCEA)
- Certified Ballast Manufacturers Association (CBMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- Pacific Gas and Electric Utility Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- American Disabilities Act (ADA)
- American Society for Testing and Materials (ASTM)
- National Electrical Contractors Association (NECA)
- National Electrical Testing Association (NETA)
- International Building Code (IBC)
- All other Authorities Having Jurisdiction

5.5.3 Modules

In addition to the above, the PV modules proposed by Design-Builder shall comply with at least, but not limited to, the following:

- IEEE 1262 "Recommended Practice for Qualifications of Photovoltaic Modules".
- Modules shall be new, undamaged, fully warranted without defect.
- Modules shall comply with the State of California SB1 Guidelines for Eligibility, listed at: http://www.gosolarcalifornia.org/equipment/pv_modules.php
- Modules shall have minimum maintenance requirements and high reliability, have a minimum 25-year design life, and be designed for normal, unattended operation.
- Acceptable mounting methods for unframed modules shall be provided by the manufacturer. Bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

5.5.4 Inverters

In addition to the above, inverters proposed by Design-Builder must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all SCE interconnection requirements.
- Inverters shall comply with the State of California SB1 Guidelines for Eligibility, listed at: <http://www.gosolarcalifornia.org/equipment/inverters.php>
- IEEE 929-2000 – "Recommended Practice for Utility Interface of Photovoltaic Systems".

- Inverters must automatically reset and resume normal operation after a power limiting operation.
- The inverter shall be capable of continuous operation into a system with voltage variation of plus or minus 10% of nominal. The inverter shall operate in an ambient temperature range of -20°C to +50°C.
- Inverters shall include all necessary self-protective features and self-diagnostic features to protect the inverter from damage (in the event of component failure or from parameters beyond normal operating range due to internal or external causes). The self protective features shall not allow the inverters to be operated in a manner which may be unsafe or damaging.
- Inverters shall be true sine wave high frequency PWM with galvanic isolation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Inverters shall be capable of adjusting to "sun splash" from all possible combinations of cloud fringe effects without interruption of electrical production.
- Isolation transformers shall be provided.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall have a THD < 5%.
- Enclosures shall be rated NEMA 3R within an appropriate shelter.
- Power factor shall be 0.99 or higher.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with City activities.
- Inverters shall have a minimum efficiency, based on the device's power rating, meeting the following specifications:

Inverter Efficiency Requirements

Inverter Power Rating Range	Minimum Efficiency
1000+ kW	96%
500-999 kW	97%
250-499 kW	96.8%
100-249 kW	95.8%
50-99 kW	94.5%
0-49 kW	93.5%

5.5.5 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking, with reliable components, proven in similar projects, and shall be designed to resist dead load, live load, corrosion UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. The Design-Builder's design shall sufficiently respond to the design requirements imposed by Federal, State, and local jurisdictions in effect at the time of Agreement execution and any pending code decisions affecting the design shall be identified during Schematic Design. Design-Builder shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to

- the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- Final coating and paint colors shall be reviewed and approved by the City during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

5.5.6 Corrosion Control

- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.
- Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- A Corrosion control plan must be submitted by Design-Builder during the Design Review process for City approval which will include at a minimum the analysis of the corrosion risk and mitigation measures.

5.5.7 Roofing requirements

Intentionally Omitted.

5.5.8 Ancillary Equipment and Infrastructure for Ground Mount Systems

Design-Builder will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing for ground mount solar systems: the site shall be surrounded by a fence to prevent students and vandals from gaining access the site. The fence shall be a ten (10) foot high chain link fence with a one (1) foot high top guard with three strands of nine-gage barbed wire. All new fences installed as part of this project shall be finished to match existing fencing at the site.
- At least two gates shall be installed to enable site access for trucks.
- Access to water (from the main site) for maintenance (module cleaning) purposes, as determined adequate by Design-Builder.
- Access to low voltage (120V) AC power (from the main site) to power maintenance equipment and miscellaneous equipment.
- Design-Builder shall install and ensure activation of security cameras on site, connected to the site's security system, in collaboration with the City (ground mount only).
- Design-Builder will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management (ground mount only).
- Design-Builder will be responsible for creating an access road to the any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.
- Design-Builder shall include safety equipment (electrical equipment, signage, etc)

5.5.9 Lightning and Surge Protection

- Design-Builder shall utilize lightning arrestors to protect appropriate equipment from lightning strikes.
- Design-Builder shall utilize surge suppressors to protect the appropriate equipment from electrical surges.

5.5.10 Storm Water Pollution Prevention Plan (SWPPP)

Design-Builder will be responsible for creating and executing a SWPPP that meets the California State regulations. The SWPPP should contain a site map(s) which shows the construction site perimeter, existing and proposed buildings, lots, roadways, storm water collection and discharge points, general topography both before and after construction, and drainage patterns across the project.

5.5.11 Wiring and Cabling Runs

- Design-Builder shall layout and install all AC conductors in conduit.
- Conduit buried underground shall be suitable for the application and compliant with all applicable codes. PVC shall be constructed of a virgin homopolymer PVC compound and be manufactured according to NEMA and UL specifications. All PVC conduit feeders shall contain a copper grounding conductor sized per NEC requirements and continuity shall be maintained throughout conduit runs and pullboxes. A tracing/caution tape must be installed in the trench over all buried conduit. Minimum size shall be 3/4". Underground conduit buried under roadways or swales shall be one slack slurry encased.
- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the City as part of Design Review.
- Electro-metallic tubing (EMT) shall be used in indoor, above grade locations and where conduit needs to be protected from damage. EMT shall not be installed underground, outdoors, or embedded in concrete. EMT shall be cold-rolled zinc coated steel and be manufactured to UL and ANSI standards. Fittings shall be watertight and malleable gripping ring compression type. Pressure cast material for nuts of compression ring type fittings and set-screw type connections are not acceptable.
- Galvanized Rigid Conduit (GRC) shall be used where exposed to weather or where subject to physical damage in exposed areas. GRC shall be continuous hot-dipped galvanized manufactured per UL and ANSI requirements. Rigid aluminum conduit is not acceptable. Conduit bodies for use with steel conduit, rigid or flexible, shall be manufactured per UL requirements and shall be cast metal with gasketed closures. Fittings for GRC conduit shall be malleable iron or forged steel with cadmium or zinc coating. Union couplings for joining rigid conduit at intermediate runs shall be of the same material as the conduit. Couplings shall be threaded concrete-tight to permit completing conduit runs when neither conduit can be turned and to permit breaking the conduit run at the union. Set screw connectors are not acceptable.
- Minimum conduit size shall be 3/4".
- All conduits, boxes, enclosures, etc. shall be secured per NEC 690 requirements.
- All conductors shall be insulated copper rated for 600V or 1000V, maximum. DC conductors shall be USE-2 600V UL Listed Sunlight resistant wire. Exception are acceptable but must be highlighted in Design Builders proposal.
- All items shall be U.L. listed and shall bear the U.L. label.
- All spare conduits shall be cleaned, mandrelled, and provided with a pullwire. Spare conduits

- shall be required for security cameras for ground mount systems.
- All feeders and branch circuits shall be sized to minimize voltage drop and losses and shall be in compliance with NEC requirements.
- Design-Builder shall furnish, install, and connect combiners and recombiners as necessary to complete the System. Enclosures for combiners and recombiners shall be NEMA 4 or 4X rated.
- All systems, conduit, boxes, components, etc. shall be grounded and bonded per NEC requirements.
- Design-Builder will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure.

5.5.12 Meters

- Design-Builder shall supply and install SCE approved a Net Generation Output Meter (NGOM) for each PV system.
- Generation Meters shall use Internet Protocol (IP) communication and shall not require a custom network for connection.
- Generation Meters shall have the capability to store metered data (including instantaneous kW, kWh, voltage, current, and phase information) in fifteen (15) minute intervals and retain such information for at least seven (7) days.

5.5.13 Shade Structure Lighting

Intentionally omitted.

5.5.14 Monitoring System, DAS, and Reporting

Design-Builder shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the City to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Design-Builder shall provide equipment to connect the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The City will pay for the cost of cellular data service if needed, but not for the modem or other equipment need to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- AC and DC voltage
- Horizontal and in-plane irradiance (at least two (2) sensors for each, at different positions in the array)
- Ambient and back-of-cell temperature (at least two (2) sensors for each, at different positions in the array)
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures, wind speed, and irradiance) shall be collected via an individual weather station installed for each system at the City.

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the City for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable City staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document.

Additionally, Design-Builder shall provide the following reports for the life of the Project:

- Monthly Production report shall be available online to the City personnel.
- Annual Performance report shall be sent electronically to the City personnel.
- System performance data shall be made available electronically to the City in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the City to assist the City in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the City in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

5.5.15 Warranties

Design-Builder shall provide a comprehensive one-year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (20) years of operation.
- Inverter: The inverter shall carry an extended warranty of at least twenty (20) years.
- Meters: At minimum, meters shall have a one (1) year warranty.
- Mounting system: twenty (20) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: the remainder of system components shall carry manufacturer warranties conform to industry standards.

All work performed by Design-Builder must not render void, violate, or otherwise jeopardize any preexisting City facility or building warranties or the warranties of system components.

5.5.16 Other Considerations

- All Balance of Systems (wiring, components, conduits, and connections) must be suited for conditions for which they are to be installed.
- Local DC and AC disconnects shall be located in accessible locations near inverters.
- Outdoor enclosures shall be rated NEMA 3R, NEMA 4, or NEMA 4X.

5.5.17 Permits and Approvals

Design-Builder shall produce required documentation in sufficient detail to obtain all regulatory approvals requested for design, construction and operation of the system, including but not limited to all federal, state, and local permits. Securing all approvals, all permits and paying all fees shall be the sole responsibility of Design-Builder. To that end, Respondent shall provide a design that is acceptable to the state, county, and local authorities having jurisdiction over this project. The proposed design shall be suitable for construction under the guidelines and regulations in effect at the time the Agreement is executed. The City will not accept responsibility for cost increases or delays resulting from inaccurate interpretation of existing codes and standards.

5.5.18 Interconnection

Design-Builder is responsible for obtaining all necessary SCE interconnection approvals for each PV system being installed. Design-Builder must comply with all interconnection requirements, such as CPUC Rule 21 for the SCE service territory. Design-Builder is responsible for the proper planning and scheduling of interconnection approvals and any potential interconnection study. Systems installed as part of this project will take advantage of Net Energy Metering (NEM). Design-Builder shall be responsible for ensuring the system design and interconnection qualifies for NEM.

5.5.19 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the Sacramento Executive Airport. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The City will independently verify production models and utilize simulation results for economic evaluations. Design-Builder shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

5.5.20 Shading

Design-Builder shall adhere to the following requirements in order to avoid excessive shading on modules. For any object near an array that is higher than the lowest point of that array by height H, Design-Builder shall locate the array farther from the object than:

- 3H to the North of the object
- 3H to the East or West of the object
- 3H to any non-cardinal direction of the object

Any Respondent whose system design does not adhere to these rules shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.

Any trees that are in the footprint of systems to be installed by the Design-Builder shall be removed by the Design-Builder at their expense, subject to the approval of the City. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The City will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Design-Builder identifies these trees during the design process.

6.0 PROCUREMENT/CONSTRUCTION

6.1. *Scope of Supply*

Design-Builder shall provide all necessary labor, materials, equipment, and services required to install complete integrated turnkey PV systems. Design-Builder shall supply all solar modules, mounting equipment, inverters, AC and DC disconnect switches, metering, related wiring, monitoring equipment, and all ancillary equipment necessary to install the PV system and interconnect it to the City electrical distribution system. The PV system installations shall comply with all contract requirements, technical specifications, approved design documents, and applicable regulatory codes and requirements. Design-Builder shall submit As-Built Construction Drawings in hard copy with four (4) sets and an electronic copy in DWG format on compact disc to the City after completion of the Proving Period for each system at each site.

6.2. *Materials and Equipment*

Materials and equipment incorporated in the Work shall be new and suitable for the use intended. No material or equipment shall be used for any purpose other than that for which it is designed, specified or indicated.

Design-Builder shall use means necessary to protect the materials and equipment before, during and after installation. Design-Builder shall promptly replace lost or damaged materials and equipment with equal, or City-approved, replacements, or repair them, at no additional cost to the City.

6.3. *Quality Assurance and Quality Control*

Design-Builder shall implement a Quality Assurance / Quality Control (QA/QC) plan for construction activities on City sites. At least 30 days prior to the planned commencement of construction, Design-Builder shall submit a copy of the QA/QC Plan for review and approval by the City.

To ensure the highest quality of the installation, Design-Builder shall:

- Implement policies and procedures to ensure proper oversight of construction work, verification of adherence to construction documents and contractual requirements, and rapid identification and mitigation of issues and risks.
- Utilize best practice methods for communicating progress, performing work according to the approved Project schedule, and completing the Project on-time.
- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Provide equipment marking, as well as labeling and signage for the Project that shall be removed after Project completion.
- Fully comply with all applicable notification, safety and Work rules (including City safety standards) when working on or near City facilities.
- Route all electrical collection system wiring and conduits in a neat and orderly fashion and in accordance with all applicable code requirements. All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads.

7.0 TESTING

Following completion of construction, Design-Builder shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be submitted and approved by the City prior to substantial completion of construction. A detailed description of each phase is provided below.

7.1. Acceptance Testing

Design-Builder shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed test methods, including sample calculations and reference to standards as required or applicable, and list of tested equipment.
- Pre-test checklist to ensure readiness and any safety measures are in-place.
- Details of all necessary adjustments, balancing, required equipment isolation or configuration, test equipment and instruments, calibration, and personnel needed.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level testing for all PV strings.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Design-Builder conducts all Acceptance Testing based on the Testing Plan approved by the City prior to substantial completion, Design-Builder shall submit a detailed Acceptance Test Report to the City for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

7.2. System Startup

Following City approval of the Acceptance Test Report, Design-Builder shall conduct tests over twenty-four (24) hours and at a time resolution of fifteen (15) minutes, recording the following data:

- Average AC output (kW)
- Average DC output (kW)
- Hourly PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information

These data points shall be presented in a manner that best depicts the actual performance of the system for City review and approval and shall be submitted as part of the Startup Test Report.

7.3. Proving Period (30 days)

Upon completion of Acceptance Testing and System Startup, and approval by the City, Design-Builder shall monitor the system during a thirty (30) day Proving Period prior to final acceptance by the City. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Design-Builder shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the City for access throughout the Proving Period. Design-Builder shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

All data and reports required in Section 2.4.5.14 shall be fully functional and available to the City at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period and deficiencies in these areas (including missing data, inaccurate reports, and other issues that make validation of system performance inconclusive) shall be grounds for denying approval of the Proving Period Report.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Design-Builder, deficiencies shall be identified with proposed corrective actions submitted to the City, and the Proving Period test repeated. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase. The Project will not be approved for final payment until the Proving Period output matches or exceeds proposed performance.

8.0 OPERATIONS AND MAINTENANCE

Intentionally omitted,

9.0 PRODUCTION GUARANTEE

Intentionally omitted.

10.0 TRAINING

Design-Builder will provide a one-time training to facilities personnel of the Purchaser regarding the operations of the system once the systems are operational. As Purchaser is responsible for Operations and Maintenance of the System, Design-Builder maintains and keep all equipment to warranty, thus it is only qualified and factory/manufacturer-trained personnel who will be able to repair systems so as not to void warranties. The only training Design-Builder will provide to facilities personnel is PV system safety, emergency shutdown procedures, and monitoring system use. Design-Builder will provide the City with a copy of the Operations and Maintenance manual.

Exhibit A-3

City of Palm Springs

Exhibit 3 - Bid Sheet, Detailed Pricing - BEST AND FINAL OFFER

Proposer: SolarCity

Site:	Animal Shelter (Ownership Only)
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System Information:

System Size (kWdc)	400.52
System Output (kWh)*	722,940

*Totaled from 8760 Generation Worksheet

Ownership System Pricing	
Subtotal Capital Costs	\$1,118,523.97
Operations and Maintenance Costs:	
Year One Operation & Maintenance Cost	\$5,908.34
O&M Escalator	3%
PPA Pricing/0% Escalator	
Year One PPA Price (\$/kWh)	
Annual PPA Escalator	

Exhibit A-4

Required certifications and bonds.

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Agreement.)

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Design-Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design-Builder's work on the Project for Client.

Design-Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at Client's determination. The costs of any such tests shall be paid by Design-Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Design-Builder's expense at no additional cost to Client.

Design-Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND
(100% of Total System Price)

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the _____ Client, ("Client") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)

("Project" or "Contract") which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

And WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of Client in the penal sum of _____ DOLLARS (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to Client all damages Client incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless Client, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to Surety's warranty and/or guarantee period as provided in the Contract, during which time Surety's obligation shall continue if Design-Builder shall fail to make full, complete, and satisfactory repair and replacements and totally protect Client from loss or damage resulting from or caused by defective materials or faulty workmanship. Nothing herein shall limit Client's rights or the Design-Builder or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Design-Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND
Design-Builder's Labor & Material Bond
(100% of Total System Price)

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the _____ Client, (or "Client") and _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)

("Project" or "Contract") which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and _____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

(Affix Corporate Seal)

Principal

By _____

Surety

By _____

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Design-Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer

ATTACHMENT 5

SolarCity

Performance Guarantee Agreement

(DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM) PALM SPRINGS ANIMAL SHELTER

This Performance Guarantee Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:		Seller:	
Name and Address	City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Attention: City Manager	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(760) 323-8204	Phone	(650) 638-1028
Fax	(760) 323-8332	Fax	(650) 560-6460
E-mail	citymanager@palm Springs-ca.gov	E-mail	contracts@solarcity.com
Project Name	Palm Springs Animal Shelter		

This Agreement sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Installation and Purchase Agreement by and between Seller and Purchaser dated the same date as this Agreement (the "DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM") and Operations and Maintenance Agreement by and between Seller and Purchaser of even date herewith (the "O&M Agreement"). The purchase price for this Agreement will be Fifty Six Thousand, Seven Hundred One Dollars and Three Cents (\$56,701.03), which shall be due and payable on the date of Final Completion of the Systems, upon which date this Agreement will become effective ("Effective Date").

All capitalized terms used hereunder shall have the meanings given such terms in the SIPA and the O&M Agreement. The term of this Agreement shall be concurrent with the term of the O&M Agreement. This Agreement will be updated as necessary by mutual written agreement of the Parties to reflect the as-built specifications of the System.

1. **Warranty.** Seller guarantees that during the period of the O&M Agreement, the System will generate the guaranteed kilowatt-hours (kWh) ("Guaranteed kWh") of energy set forth as follows:

A. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the Actual kWh is *greater* than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. **“Guaranteed kWh”:**

True Up Term Years	Guaranteed kWh
Years 1-5	3,578,726
Years 6-10	3,490,148
Years 11-15	3,403,763
Years 16 -20	3,319,516

D. **“Actual kWh”** means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive sixty (60) month anniversary of the Commercial Operation Date. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	Guaranteed Energy Price per kWh
Years 1-5	\$0.212
Years 6-10	\$0.246
Years 11-15	\$0.285
Years 16 - 20	\$0.331

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

- A. someone other than Seller or its approved service providers installed, removed, re-installed or repaired the System;
- B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);
- C. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM or the O&M (such as if Purchaser modifies or alters the System);
- D. Purchaser’s breach of this Agreement including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- E. any Force Majeure Event (as defined below);
- F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;
- G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

- A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
- B. Seller's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
- C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by Seller's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by Seller or under its control.

4. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law, Arbitration.**

A. General. The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration, provided that the following dispute resolution steps shall first be exhausted:

B. Meet and Confer. An officer of each Party shall conduct a meet and confer conference to mutually resolve any conflict or alleged default. The meet and confer conference may be called by either Party and shall be held within 10 days from the date that a request for the conference is made. If the meet and confer conference does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the non-binding mediation process set forth below.

C. Non-Binding Mediation. The Parties shall mutually call for a non-binding mediation process to be conducted under the auspices of the judicial mediation services of "JAMS" in its Riverside County Offices. The Parties shall arrange to have the mediation conducted within 60 days from date of the call for mediation. If the non-binding mediation process does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the binding arbitration process set forth below;

D. Binding Arbitration. Each arbitration, including the selecting of the arbitrator, will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures. If JAMS is unavailable, the AAA will be the administering body. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either Party can initiate a binding arbitration proceeding by filing the necessary forms with JAMS after first utilizing the meet and confer process and non-binding mediation process described above. Venue for any arbitration brought under this Agreement shall be proper in Riverside California. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement. In the event of any arbitration arising from or related to this Agreement, the prevailing Party will be entitled to recovery of all reasonable costs incurred, including court costs, attorneys' fees, experts' fees and other related expenses.

6. **Assignment and Transfer of this Agreement.** Seller may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of Seller's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM and the O&M Agreement.

7. **Entire Agreement. Changes.** This Agreement contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM and the O&M Agreement. No breach of this Agreement shall affect Purchaser's obligations under the DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM or the O&M Agreement. The DESIGN/BUILD AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING OF SOLAR/PHOTOVOLTAIC SYSTEM and the O&M Agreement may be assigned to a third party without assignment of Seller's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

IN WITNESS WHEREOF, the Parties have executed and entered into the Agreement on this ___ day of _____, 2016.

"PURCHASER"

CITY OF PALM SPRINGS, a California charter city and municipal corporation

ATTEST:

By: _____
James Thompson
City Clerk

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

"SELLER"

SOLARCITY CORPORATION, a Delaware corporation

Corporations require two notarized signatures: One signature must be from the Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT 6



Operation and Maintenance Agreement (Commercial)

Palm Springs Animal Shelter

This Operation and Maintenance Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Attention: City Manager	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(760) 323-8204	Phone	(650) 638-1028
Fax	(760) 323-8332	Fax	(650) 560-6460
E-mail	citymanager@palmsprings-ca.gov	E-mail	Contracts@solarcity.com
Facility Ownership	Purchaser owns/leases the Facility		Contractor’s License Numbers CA: CSLB TBD

This Agreement sets forth the terms and conditions for the provision of operation and maintenance services related to the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1 Pricing Attachment
- Exhibit 2 System and Facility Description
- Exhibit 3 Scope of Work
- Exhibit 4 General Terms and Conditions
- Exhibit 5 Insurance Requirements

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into the Agreement on this ____ day of _____, 2016.

ATTEST:

**CITY OF PALM SPRINGS, a California
charter city and municipal corporation**

By: _____
James Thompson
City Clerk

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

SOLARCITY CORPORATION, a Delaware corporation

Corporations require two notarized signatures: One signature must be from the Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit 1
Pricing and Term

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Not Applicable.
3. **Fee:**

Payment table	
Year	Amount Due
Year 1	\$ 5,908.34
Year 2	\$ 6,085.59
Year 3	\$ 6,268.15
Year 4	\$ 6,456.20
Year 5	\$ 6,649.88
Year 6	\$ 6,849.38
Year 7	\$ 7,054.86
Year 8	\$ 7,266.51
Year 9	\$ 7,484.50
Year 10	\$ 7,709.04
Year 11	\$ 7,940.31
Year 12	\$ 8,178.52
Year 13	\$ 8,423.88
Year 14	\$ 8,676.59
Year 15	\$ 8,936.89
Year 16	\$ 9,205.00
Year 17	\$ 9,481.15
Year 18	\$ 9,765.58
Year 19	\$ 10,058.55
Year 20	\$ 10,360.30

4. **Extra Work-related rates:**

Extra Work: Time and Materials Charges

SolarCity hourly rates are not inclusive of materials needed for the system repairs. Materials will be charged at cost plus 15%.
\$75.00/hour - Field Service Technician hourly rate, Regular Time
\$100/hour - Field Service Technician hourly rate, Overtime or Non-business hours.
\$40/hour - General Laborer, Regular Time
\$60/hour - General Laborer, Overtime
Invoicing will occur on a per occurrence basis. Terms are net 30.

Exhibit 2
System and Facility Description

Mounting Type: Fixed tilt ground mount

System Size: 400.52 kW

Modules: Poly 310W **Quantity:** 1,292

Inverters: Fronius Symo 24.0-3 (480) **Quantity:** 14

Facility Location: Palm Springs Animal Shelter

Exhibit 3
Scope of Work

Frequency	SCOPE OF WORK
	Preventive Maintenance - PM work as described below is generally intended maintain the system in good working order as well as catch any potential issues. However, this work does not guarantee that the System will not experience outages or other related problems. All such reactive maintenance will be billed as Extra Work.
	Inverters
1/year	Visual inspection of both interior and exterior of inverter for signs of leaks, physical damage, corrosion or deterioration. Inspection shall include that of the inverter pad as well.
	Visual inspection shall include looking for signs of pest or insect intrusion which could adversely affect the inverter performance or create health or safety issues.
	Verify torque marks on inverter connections have not moved. If necessary, re-torque connections to manufacturer's specifications.
	Perform thermal scans of key connection points with inverter
	Record total energy production to date
	Record Voc & Imp readings at all incoming DC and outgoing AC conductors
	Clean inverter filters and replace as necessary.
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Transformers
1/year	Inspection
	Visual inspection of both interior and exterior of transformer for signs of leaks, physical damage, corrosion or deterioration. Inspection shall include that of the transformer pad as well.
	Verify torque marks on transformer connections have not moved. If necessary, re-torque connections to manufacturer's specifications.
	Record inspection results on Transformer Inspection Checklist
	Perform thermal scans of key connection points with transformer
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	DC Disconnects, Combiners, Wiring
1/year	Perform visual inspections
	Inspect inside and outside of all DC equipment for corrosion, weather tight integrity, intrusion of water, pests, dirt, or other debris
	Clean inside of equipment of debris
	Inspect conduits for loose connections, corrosion, bonding.
	Conduct a spot check exposed wire for abrasions, faults, cuts, proper connections, and excessive ware.
	Perform thermal scans or disconnects, combiners, relays, switches, on the DC side of PV System

	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Inspect terminations for proper torque settings wherever conductors are landed. Record any instances where tightening of connections is required
	Deficiencies during inspection will be recorded and marked as Extra Work for remediation.
	Measure and Record Voc and Imp. Record irradiance and temp when conducting testing.
	Note any instances where Voc or Imp fall below expected ranges
	AC Disconnects, PV Load Centers, Wiring
1/year	Perform visual inspections
	Inspect inside and outside of all AC equipment for corrosion, weather tight integrity, intrusion of water, pests, dirt, or other debris
	Clean inside of equipment of debris
	Inspect conduits for loose connections, corrosion, bonding.
	Conduct a spot check exposed wire for abrasions, faults, cuts, proper connections, and excessive wear.
	Perform thermal scans on disconnects, combiners, relays, switches, on the DC side of PV System
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Inspect terminations for proper torque settings wherever conductors are landed. Record any instances where tightening of connections is required
	Deficiencies during inspection will be recorded and marked as Extra Work for remediation.
	Measure and Record Voc and Imp. Record irradiance and temp when conducting testing.
	Note any instances where Voc or Imp fall below expected ranges
	Meters and Sensors
1/year	Visual inspection and cleaning
	Visual inspection and cleaning of meteorological devices.
	Maintain meters and sensors as required by Operations Manual
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Solar Modules
1/year	Visual Inspection
	Inspect modules for corrosion, discoloration, burn marks, hot spots, cracks, or other related damage
	Inspect modules for loose connections. Spot check random sample of modules at each array.
	Create report of any deficiencies to be corrected as Extra Work.
	PV Racking and Mechanical Attachments
1/year	Visual Inspection of racking for:

	Loose or missing mechanical connections
	Corrosion
	Broken or damaged connections
	Check for secure bonding of ground lugs to racking as well as any corrosion from dissimilar metals
	Visual inspection of ground mount piers for hydro-collapse, erosion, deterioration
	Carport arrays shall have a "push test" of modules to verify secure connections. Modules will be pushed up on from below.
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Site Conditions and Civil Inspections
1/year	Visual inspection of site conditions.
	Fence and any roadway access inspections for erosion, damage, or corrosion
	Inspect and report on vegetation growth. Record if vegetation is or will affect insolation access to PV array.
	Record inspection results. Any deficiencies requiring an additional trip to perform remediation services will be recorded as Extra Work
	Reporting
1/year or per occurrence	SolarCity shall issue a report regarding all Preventative Maintenance services provided and any recommended corrective actions.
	Owner will have the opportunity to approve Extra Work based on report
	Contractor shall deliver report in an electronic fashion.
	Extra Work: Corrective Maintenance
	SolarCity will conduct reactive maintenance as required by the client or as necessary depending on deficiencies discovered in the Preventative Maintenance Report. Incidental repairs during the course of Preventative Maintenance will be conducted for no charge. These repairs will not constitute more than 1 man hour of work per System. Such repairs may include installing new fuses, making inter-module connections, or tightening loose connections.
	All other repairs will be billed on a T&M basis. A quote will be provided for such services before any action is taken.
	Customer Support
	Monday - Friday
	9:00am – 5:00pm (PST)
	Optional Work (not included with Preventative Maintenance)
	OEM Warranty Servicing
	SolarCity will act as the owner representative in OEM-related warranty matters provided that there is such an agreement.

	<p>Warranty servicing will include identifying problematic parts, interfacing with the manufacturer, sending and receiving appropriate paperwork and materials, installing new parts and send back old parts.</p> <p>Services will be billed on a T&M basis. Owner will collect any credits from the manufacturer which they can use to offset the cost of SolarCity warranty services.</p>
	Vegetation control
As required by customer	Perform vegetation control.
	Vegetation trimming to bring weeds down to ground level
	Application of pre and post emergent herbicides to prevent long term seed germination. Will not prevent all weed growth but will eliminate the need for on going mowing services.
	Where spraying is not allowed trimming will be conducted around the array.
	Any and all chemical used on site will be recorded. Should it be required, reports will be distributed to appropriate authorities based on state and federal regulations
	PV Array Washing
As required by customer	Cleaning and washing of PV modules using a variety of methods depending on array type; ground mount, carport, or rooftop, as well as access to water.
	Collection and removal of water if required will incur an extra charge
	Soft bristle scrubber shall be used to remove hard or crusted on soiling
	Before and after pictures taken of the array in various spots to be included in report.
	Meters and Sensors Calibration
As required by customer	Verify accuracy and calibrate meters and sensors as per manufacturer's instructions. Assuming one meter and one sensor per project. Additional meters or sensors will be Extra. Any equipment needing to be sent off site for calibration or testing will be invoiced separately at owner's cost.
	Additional calibration beyond that recommended by manufacturer will be deemed Extra Work.

Exhibit 4
General Terms and Conditions

ARTICLE I
DEFINITIONS

The following capitalized terms used herein shall have the meanings specified in this Article I.

“Affiliate” of any person means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

“Agreement” has the meaning set forth in the preamble.

“Applicable Law” means all federal, provincial and municipal statutes, regulations, codes, by-laws, orders in council, directives, rules, guidelines and ordinances of any Governmental Authority applicable to this Agreement, including without limitation all applicable California codes, rules or guidelines.

“Business Day” means any day on which commercial banks are not authorized or required to close in the State of California.

“Effective Date” has the meaning set forth in the Preamble.

“Extra Work” means any services other than Services.

“Fee” has the meaning set forth in Section 2.01.

“Force Majeure Event” means any event, condition or circumstance beyond the control of SolarCity which, by the exercise of due foresight SolarCity could not reasonably have been expected to avoid, and which by the exercise of due diligence SolarCity without fault attributable to it is unable to overcome, including, but not limited to, action by a Governmental Authority, failure to obtain or maintain a permit, license, consent or approval (provided, that SolarCity has made timely and reasonable commercial efforts to obtain and maintain the same), third party failure to timely provide goods or services, national or regional third party labor disputes, flood, earthquake, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or act of god.

“Governmental Authority” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over Owner, SolarCity, their respective Affiliates or any System.

“Indemnifiable Loss” means any claim, demand, suit, loss, liability, damage, obligation, payment, cost or expense (including, without limitation, the cost and expense of any action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys’ fees and reasonable disbursements in connection therewith) for personal injury or property damage.

“Owner” has the meaning set forth in the Preamble.

“Owner Indemnitee” has the meaning set forth in Section 4.02.

“Party” and “Parties” has the meaning set forth in the Preamble.

“Permits” means all governmental or regulatory approvals required for the ownership, maintenance, operation and removal of each System.

“Prudent Industry Practices” means those practices, methods, standards, and acts (including those engaged in or approved by a significant portion of the solar-generated electric power industry for similar facilities in the United States) that at a particular time in the exercise of good judgment, and in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in compliance with all Applicable Laws and in a manner consistent with safety, environmental protection, economy, and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Services” means, collectively, the services set forth in Exhibit 2 and all other obligations of SolarCity under this Article II of these General Terms and Conditions other than Extra Work.

“SolarCity” has the meaning set forth in the Preamble.

“SolarCity Indemnitee” has the meaning set forth in Section 4.01.

“System” has the meaning set forth in the Recitals.

“Term” has the meaning set forth in Section 3.01.

ARTICLE II

SERVICES; STANDARDS

2.01 General; Compensation. Subject to the terms and conditions of this Agreement, SolarCity shall provide the Services to Owner throughout the Term. Owner shall compensate SolarCity for the Services as set forth in Exhibit 1 during the Term (such compensation, the “Fee”). Payments shall be made within 30 days after SolarCity’s tender of an invoice and shall be deemed fully earned and non-refundable when due. In addition to the Fee, materials costs and service costs incurred by SolarCity in performing Services that are not covered by a manufacturer warranty will be billed to Owner at the rate set forth in Exhibit 1, which rates may be updated by SolarCity from time to time to reflect changes in market pricing without the need for Owner’s consent. Payment for such materials costs shall be made thirty (30) days after Owner is invoiced therefor. SolarCity shall include reasonable and customary supporting materials with each invoice with respect to the matters covered by such invoice.

2.02 Extra Work. If SolarCity discovers that Extra Work is required or indicated, SolarCity shall notify Owner of the need for such Extra Work. If Owner desires that SolarCity perform Extra Work, then Owner and SolarCity shall enter into a supplement to this Agreement describing the scope, price, any required Permits, and schedule of such Extra Work. SolarCity shall provide any Extra Work to Owner in accordance with the provisions of this Agreement. After completion of the Extra Work, SolarCity will invoice Owner for amounts due and payment for such Extra Work shall be made by Owner within thirty (30) days after Owner is invoiced by SolarCity therefor.

2.03 Standard of Performance; Warranty; Response Time.

(a) SolarCity shall ensure that all of its work under this Agreement is performed in accordance with the normal standards of performance within the solar photovoltaic power generation industry in the relevant market and Prudent Industry Practices, in each case as applicable to the work being performed.

(b) SolarCity warrants that any service that it performs (whether as a part of the Services or Extra Work) shall be free from defects for a period of 90 days from the date performed. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. If Owner notifies SolarCity of a defect in SolarCity’s services within the foregoing warranty period, then Solar City shall promptly re-perform the affected service in order to correct the

defect and such re-performance shall be SolarCity's sole liability and Owner's sole remedy for such warranty claim.

(c) SolarCity will use reasonable efforts to initiate a response to problems involving the System that are within the scope of the Services within 2 business days after SolarCity discovers such problems.

2.04 License. The Owner hereby grants SolarCity and its authorized agents, employees and subcontractors a license to access and use Customer's real and personal property and the System to the extent required for SolarCity to perform its obligations under this Agreement. Such license shall automatically expire immediately upon the earlier of the termination or expiration of this Agreement.

2.05 Title. Title to all items, parts, materials and equipment supplied under or pursuant to this Agreement to Owner shall transfer to Owner upon payment by Owner to SolarCity for such items, parts, material and equipment.

2.06 Record-Keeping and Reporting. SolarCity shall keep and maintain a maintenance log for the System in electronic format. The maintenance log shall contain descriptions of maintenance services performed by SolarCity, follow-up activities, if any, that are required, and other information relevant to SolarCity's maintenance activities. Throughout the Term, SolarCity shall, upon Owner's request, provide access to the maintenance log to Owner from time to time but not more than once per year.

2.07 Remote Monitoring. For purposes of determining when repair services are necessary, SolarCity shall monitor and evaluate the information gathered through remote monitoring of the System as well as the maintenance and inspection reports. If SolarCity is using Owner's internet connection to support remote performance monitoring, (a) SolarCity's ability to perform remote monitoring is conditioned upon Owner's provision and maintenance of a working internet connection for that purpose, and (b) if Owner at any time does not maintain and provide SolarCity with access to a working internet connection, SolarCity shall notify Customer of same after SolarCity's discovery thereof and shall perform remote troubleshooting with respect to same to the extent practicable. Notwithstanding anything to the contrary, SolarCity shall not, and shall not be obligated to, (1) assist Customer with internet connectivity issues or be obligated to restore Owner's internet connection unless the loss of such connection directly results from SolarCity's acts or omissions, or (2) to perform remote monitoring when there is not a working internet connection.

2.08 Permits.

(a) SolarCity shall be responsible for procuring, obtaining, maintaining and complying with all Permits required for it to perform the Services¹ under this Agreement. Permits required for Extra Work shall be addressed in the supplement addressing such Extra Work.

(b) Owner shall cooperate with and assist SolarCity in obtaining all Permits required to perform the Services and Extra Work. Notwithstanding anything in this Agreement to the contrary, SolarCity shall be required to comply with Applicable Law at no additional charge to Owner except to the extent additional charges are incurred by SolarCity due to Owner's acts or omissions.

2.09 Metering. SolarCity shall be responsible for maintaining each electricity-related meter and related performance monitoring equipment that measures performance of the System including, without limitation, the meter that relates to the System's inverter (but excluding all utility meters). Notwithstanding the foregoing, if a meter is damaged by Owner or Owner's subcontractor, invitees or agents, then Owner shall reimburse SolarCity for all costs, expenses and damages incurred by SolarCity with respect to such damage within thirty (30) days after receiving SolarCity's invoice therefor.

2.10 Access to Data and Information. Owner hereby grants SolarCity reasonable access and use rights with respect to all data and other information in Owner's possession or control including without limitation data relating to the electricity production of each System, the weather conditions at each site where each System is located System design and construction information and drawings, maintenance history information, System performance information, warranty information, Site-related information and surveys) to the extent requested by SolarCity in connection with this Agreement

2.11 Warranty Claims. To the extent that manufacturer warranties cover replacement and/or repair of covered equipment during the Term, SolarCity shall use commercially reasonable efforts to submit, process and pursue warranty coverage as Extra Work in accordance with Section 2.02. In addition, because it may be necessary for warranty claims to be submitted in the name of Owner, Owner shall provide such full and complete cooperation (at Owner's sole cost and expense) as SolarCity may reasonably require in connection with the submission, processing and pursuit of warranty coverage. To the extent that Owner asks SolarCity to perform warranty-related work for matters outside of those covered directly by SolarCity's workmanship warranty in Section 2.03(b), such work shall constitute (and SolarCity shall be compensated for same as) Extra Work under this Agreement.

ARTICLE III TERM AND TERMINATION

3.01 Term. The term of this Agreement (the "Term") is as set forth in Exhibit 1 unless this Agreement is terminated earlier under the provisions of this Agreement.

3.02 Termination for Default.

(a) Termination By Owner. Owner may terminate this Agreement if SolarCity:

(i) files a petition in bankruptcy, or is adjudicated bankrupt, or takes advantage of the insolvency law of any state or country, or makes an assignment for the benefit of creditors, or has a receiver, trustee or other court officer appointed for its property, or

(ii) fails to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from Owner to SolarCity; provided, that if such failure cannot reasonably be remedied within such thirty (30) calendar day period, and SolarCity commences to cure such failure within such thirty (30) calendar day period and thereafter diligently seeks to remedy such failure, then Owner shall not be entitled to terminate this Agreement until such time as SolarCity ceases all reasonable endeavors to cure such failure.

(b) Termination by SolarCity. SolarCity may terminate this Agreement if Owner:

(i) files a petition in bankruptcy, or is adjudicated bankrupt, or takes advantage of the insolvency law of any state or country, or makes an assignment for the benefit of creditors, or has a receiver, trustee or other court officer appointed for its property;

(ii) fails to pay, in accordance with the terms of this Agreement, any amounts due hereunder within three (3) calendar days after the date that such amount is due; or

(iii) breaches this Agreement (other than failure to pay), which breach is not remedied within thirty (30) calendar days of written notice of such failure from SolarCity to Owner.

(c) Notice. A notice of termination given pursuant to the foregoing provisions of this Section 3.02 shall specify in reasonable detail the circumstances giving rise to such termination notice. Except to the extent otherwise provided herein, this Agreement shall terminate on the date specified in the termination notice, which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided above and not later than thirty (30) days from the date of such termination notice.

ARTICLE IV INDEMNIFICATION

4.01 Indemnification of SolarCity by Owner. Owner shall indemnify, defend and hold harmless SolarCity and its and its Affiliates' officers, managers, directors, partners, employees, shareholders, and agents (each, a "SolarCity Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any SolarCity Indemnitee in any way relating to, resulting from or arising out of or in connection with any Third party claims against a SolarCity Indemnitee to the extent involving (i) the negligence, fraud or willful misconduct of Owner, its Affiliates or its subcontractors or (ii) any breach by Owner of the representations and warranties under this Agreement; provided, that in each case, Owner shall have no obligation to indemnify SolarCity to the extent of any negligence, fraud or willful misconduct of SolarCity, its Affiliates or its subcontractors or the breach by SolarCity of this Agreement.

4.02 Indemnification of Owner by SolarCity. SolarCity shall indemnify, defend and hold harmless Owner and its and its Affiliates' officers, managers, directors, employees, partners, and agents (each, an "Owner Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Owner Indemnitee in any way relating to, resulting from or arising out of or in connection with any Third party claims against an Owner Indemnitee to the extent involving (i) the negligence, fraud or willful misconduct of SolarCity, its Affiliates or its subcontractors, or (ii) any breach by SolarCity of its representations and warranties under this Agreement; provided, that in each case, SolarCity shall have no obligation to indemnify Owner to the extent of any negligence, fraud or willful misconduct of Owner, its Affiliates or its subcontractors or the breach by Owner of this Agreement.

ARTICLE V FORCE MAJEURE

5.01 If SolarCity is rendered wholly or in part unable to perform its obligations under this Agreement because of a Force Majeure Event, SolarCity shall be excused from whatever performance is affected by the Force Majeure Event; provided, that:

(a) SolarCity shall, as soon as is reasonably possible after the occurrence of the Force Majeure Event, give Owner written notice describing the particulars of the occurrence;

(b) the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure Event; and

(c) no obligation of SolarCity which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

ARTICLE VI LIMITATIONS ON LIABILITY

6.01 Aggregate Limit of Liability.

(a) IN NO EVENT SHALL SOLARCITY BE LIABLE TO OWNER UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE),

FOR ANY (i) MATTER BEYOND ITS REASONABLE CONTROL, (ii) LOSS OF DATA, LOSS OR INTERRUPTION OF USE OF THE SYSTEM, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR EQUIPMENT, (iii) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (iv) DIRECT DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS SET FORTH IN SECTION 6.01(b) HEREIN. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

(b) In no event will SolarCity be liable under this Agreement to Owner for an aggregate amount in excess of an amount equal to the total amount actually paid to SolarCity under the terms of this Agreement in any given year, less the amount of any damages then paid by SolarCity under this Agreement, unless and to the extent such liability is the result of SolarCity's fraud, gross negligence or willful misconduct, in which case the foregoing limit shall not apply. Any action by Owner under this Agreement must be brought within two (2) years after the cause of action accrues.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.01 Representations and Warranties of Owner. Owner represents and warrants that:

(a) Owner is incorporated, continued or established, organized and validly subsisting under the laws of its jurisdiction of incorporation, continuation or formation;

(b) Owner possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;

(c) Owner's execution, delivery and performance of this Agreement have been duly authorized and this Agreement has been duly executed and delivered and constitutes Owner's legal, valid and binding obligation, enforceable against Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency and other legal principles pertaining to creditor's rights;

(d) Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by Owner of this Agreement;

(e) The execution, delivery and performance by Owner of this Agreement will not (i) violate any Applicable Law applicable to Owner, (ii) result in any breach of, or constitute any default under, any contractual obligation of Owner, or (iii) result in, or require, the imposition of any lien or other encumbrance on any of the properties or revenues of Owner;

(f) Owner owns each of the Systems and has all of the rights required for it to grant the rights and perform its obligations under this Agreement; and

(g) Owner has and at all times will have the ability to pay for its obligations under this Agreement.

7.02 Representations and Warranties of SolarCity. SolarCity represents and warrants that:

(a) SolarCity is a corporation duly organized and existing in good standing under the laws of the State of Delaware;

(b) SolarCity possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;

(c) SolarCity's execution, delivery and performance of this Agreement have been duly authorized and this Agreement has been duly executed and delivered and constitutes SolarCity's legal, valid and binding obligation, enforceable against SolarCity in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency and other legal principles pertaining to creditor's rights;

(d) Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by SolarCity of this Agreement; and

(e) The execution, delivery and performance by SolarCity of this Agreement will not (i) violate any Applicable Law applicable to SolarCity, or (ii) result in any breach of, or constitute any default under, any contractual obligation of SolarCity.

ARTICLE VIII **INSURANCE**

8.01 Each party shall, at its sole cost and expense, procure and maintain or cause to be procured and maintained during the Term insurance in the types and amounts listed in Exhibit 5, as applicable.

ARTICLE IX **MISCELLANEOUS**

9.01 Independent Contractors. The Parties acknowledge that SolarCity shall perform its obligations under this Agreement and act at all times as an independent contractor (except as expressly provided herein) and nothing in this Agreement shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint ventures or anything other than independent contractors, and the Parties expressly disclaim any intention to create a partnership, joint venture, association or other such relationship. Neither Party is granted any right (except as expressly provided herein) on behalf of the other Party to assume or create any obligation or responsibility binding such other Party. None of a Party's employees, subcontractors or any such subcontractor's employees shall be or shall be considered to be employees of the other Party. Each Party shall be fully responsible for the payment of all wages, salaries, benefits and other compensation to its employees and all amounts due and owing to its subcontractors.

9.02 Notices.

Any notice required or authorized to be given hereunder or any other communication provided for under the terms of this Agreement shall be in writing and shall be delivered personally or by reputable next Business Day express courier service or by electronic transmission addressed to the relevant party at the address stated below or at any other address notified by that party as its address for service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the relevant courier, and any notice so given by electronic transmission shall be deemed to have been served on transmission and receipt of confirmation of successful transmission during normal business hours. The Parties' addresses for notice and service are:

To SolarCity:	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Email: contracts@solarcity.com
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To Owner: City of Palm Springs
E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attention: City Manager
Email: citymanager@palmsprings-ca.gov

9.03 Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable therein without giving effect to conflict of law principles as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. The Parties hereby irrevocably and unconditionally attorn to the non-exclusive jurisdiction of the courts of San Francisco, California, and all courts competent to hear appeals therefrom.

9.04 Entire Agreement. This Agreement reflects the entire agreement with respect to the matters set forth herein and supersedes all prior agreements, commitments, drafts, communication, discussions and understandings, oral or written, with respect thereto.

9.05 Further Assurances. Each Party agrees to do such further acts and things and execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the matter contemplated hereby.

9.06 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.

9.07 Assignment. a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv), subject to the written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

9.08 No Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.09 Survival. The provisions of this Agreement that by their nature survive the expiration or earlier termination of this Agreement (including, for example, payment and indemnification obligations) shall so survive until the earlier of (a) the date on which they are fully performed in accordance with this Agreement, or (b) two (2) years from the date of such expiration or termination, as applicable.

9.10 Delay and Waiver. A Party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

9.11 Waiver of Jury Trial. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION, DIRECTLY OR INDIRECTLY BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT.

9.12 Headings. Article, Section and paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and are not part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

9.13 Counterparts. This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. The Parties agree that electronic (including without limitation .pdf) or facsimile signatures of the Parties on this Agreement shall have the same force and effect as original signatures.

9.14 Disputes. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration, provided that the following dispute resolution steps shall first be exhausted:

9.14.1. Meet and Confer. An officer of each Party shall conduct a meet and confer conference to mutually resolve any conflict or alleged default. The meet and confer conference may be called by either Party and shall be held within 10 days from the date that a request for the conference is made. If the meet and confer conference does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the non-binding mediation process set forth below;

9.14.2. Non-Binding Mediation. The Parties shall mutually call for a non-binding mediation process to be conducted under the auspices to of the judicial mediation services of "JAMS" in its [Riverside or Orange County Offices]. The Parties shall arrange to have the mediation conducted within 60 days from date of the call for mediation. If the non-binding mediation process does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the binding arbitration process set forth below;

9.14.3. Binding Arbitration. Each arbitration, including the selecting of the arbitrator, will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures. If JAMS is unavailable, the AAA will be the administering body. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either Party can initiate a binding arbitration proceeding by filing the necessary forms with JAMS after first utilizing the meet and confer process and non-binding mediation process described above. Venue for any arbitration brought under this Agreement shall be proper in [Riverside or Orange County] California. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any

transaction other than this Agreement. In the event of any arbitration arising from or related to this Agreement, the prevailing Party will be entitled to recovery of all reasonable costs incurred, including court costs, attorneys' fees, experts' fees and other related expenses.

[Remainder of page intentionally left blank.]

Exhibit 5
Insurance Requirements

At all times during the Term, SolarCity and Owner shall maintain the following insurance coverage, as applicable:

1. SolarCity's Insurance. SolarCity shall maintain (a) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (b) automobile liability insurance with coverage of at least \$1,000,000 combined single limit, (c) employers liability insurance with coverage of at least \$1,000,000 and (d) workers compensation insurance as required by law.
2. Owner's Insurance. Owner shall maintain (a) property insurance on the Systems for the replacement cost thereof and (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
3. Policy Provisions. All required insurance policies shall (a) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (b) be written on an occurrence basis, (c) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
4. Certificates of Insurance. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
5. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

[Remainder of page intentionally left blank.]

ATTACHMENT 7

**POWER PURCHASE AGREEMENT
PALM SPRINGS CONVENTION CENTER SOLAR/PHOTOVOLTAIC SYSTEM**

This Power Purchase Agreement ("**Agreement**") is made this ____ day of ____, 2016, by and between the City of Palm Springs, a California Charter city and municipal corporation, ("**Purchaser**", or "**City**"), and SolarCity Corporation, a Delaware corporation, ("**Seller**"), collectively referred to as the "**Parties**" or individually as a "**Party**."

RECITALS

- A. City as a Purchaser desires to contract with Seller to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Seller is in the business of designing, constructing and operating solar photovoltaic ("**PV**") electric generating systems for the purpose of selling power generated by the systems to its buyers;
- C. Purchaser has selected Seller to design, construct, own and operate a solar PV generating system to be located at the Palm Springs Convention Center subject to the terms, conditions, covenants and provisions set forth herein;
- D. Seller intends to construct, own, and operate renewable energy-powered generating facilities that shall qualify as an eligible renewable energy resource under the State of California Renewable Portfolio Standard and desires to sell electricity produced by such generating facilities together with other attributes to Purchaser pursuant to the terms, conditions, covenants and provisions set forth herein; and
- E. Purchaser desires to purchase electricity generated by Seller's generating facility, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, City and Seller hereby agree as follows:

1. Definitions and Interpretation. References in the Agreement to the terms or phrases below shall have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of the Agreement, the more specific provision shall control.

"**Delivery Point**" means the physical location at which the electric energy produced by the System is delivered to the Site.

"**Dollar**" or "**\$**" means United States dollars, the official currency of the United States of America.

"**Facility**" means the buildings and infrastructure on the Premises to which the System will provide electric energy pursuant to this Agreement.

"**Premises**" means the real property on which the Facility is located, represented by the legal description thereof at Exhibit 4 of this Agreement.

"**Site**" means the physical location(s) on which the System will be installed.

"**System**" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, and monitoring equipment, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, and all other materials and equipment necessary to produce the supply of electric energy pursuant to this Agreement.

"**Utility Company**" means Southern California Edison.

Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. Purchase and Sale of Electricity. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "**Term**"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on Exhibit 2 (the "**Delivery Point**"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System.

3. Initial Term of the Agreement. The initial term of this Agreement shall commence on the Commercial Operation date as defined below and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. "**Commercial Operation Date**" is that point in time when the System is mechanically complete, capable of providing electric energy to the Delivery Point and allowed to tie into the grid, as determined by the Utility Company.

Prior to the Commercial Operation Date, commencing at the outset of the construction phase and every two (2) weeks thereafter, Seller and Purchaser hereby agree to meet at the construction site on a mutually agreed upon day and time to review Seller's then completed construction over the past two (2) weeks and to review Seller's anticipated construction for the upcoming two (2) weeks. Both Purchaser and Seller shall designate specific individuals to attend these meetings. If Purchaser does not believe that Seller's construction is in substantial compliance with the Approved Design Documentation, as specified in Table 2 of the corresponding Service Agreement and as already approved by the relevant authority having jurisdiction and as already approved by Purchaser, Purchaser shall communicate such disapproval in writing or orally at such meetings, and if orally, Purchaser shall provide written disapproval following such meeting. If Seller has deviated from the Approved Design Documentation, Seller shall, as soon as reasonably practicable, commence remedial measures to correct such deviated construction. Therefore, on the Commercial Operation Date, Purchaser will be assured that Seller's construction is in substantial compliance with the Approved Design Documentation, as Purchaser will have had the opportunity to review Seller's construction throughout the construction phase.

4. **Additional Terms.** After the Initial Term, the Agreement may renew for additional five year terms (each an “**Additional Term**”), if a written request for renewal is given by the Purchaser at least one hundred eighty (180) days prior to the expiration of the Initial Term. The Parties shall confer and agree on a schedule for the Price, Escalation Rate, Terminal Values, Expected Annual Contract Quantity and termination and amendment procedure for any Additional Term. The remainder of the terms and conditions shall remain substantially the same for each Additional Term as for the Initial Term. If Seller consents to renewal, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Purchaser. If consent by Seller is not provided within such sixty (60) day period, the Agreement shall expire as of the last day of the Initial Term. No later than sixty 60 days after Seller provides such consent, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Terminal Values, and Expected Annual Contract Quantity for such Additional Term, Purchaser shall confirm to Seller in writing of its intent to proceed with its option to renew. In the event Purchaser does not provide such confirmation, the Agreement shall expire as of the last day of the Initial Term. Upon expiration of the Initial or Additional Term, Seller shall cause the applicable System to be removed from the Purchaser’s premises pursuant to Section 11 or Purchaser may exercise its option to purchase the System.

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser including any outstanding balances.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all Taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility Company’s electric distribution system; provided, however, Purchaser will not be required to pay or reimburse Seller for any Taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or purchaser default. For purposes of this Section 4(c), “**Taxes**” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of energy under this Agreement, which shall be Seller’s responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two percent (2.0%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

- a. **Ownership.** Unless otherwise prohibited by statute or regulation of any Governmental Authority, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller.
- b. **"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradable renewable credits and Green-e® products.
- c. **"Environmental Incentives"** means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility Company, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

- d. **"Governmental Authority"** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.
- e. **"Tax Credits"** means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.
- f. **"CSI Incentives"** Seller shall reimburse the Purchaser for Purchaser's payment of the California Solar Initiative rebate reservation fee within 30 days of receipt of the Purchaser's invoice for such payment. In addition, Seller shall apply for any rebates from the State of California, the Utility Company or other electricity provider on behalf of the Purchaser.

6. **Conditions to Obligations.**

- a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:
 - i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "**Premises**") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System by Seller;
 - ii. Within one hundred and twenty (120) days of execution of the Agreement, Seller must have obtained a financing commitment for construction of the System.
 - iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
 - iv. Execution of all necessary agreements by Purchaser with the Utility Company for interconnection of the System to the Utility Company's electric distribution system; and
 - v. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.
- b. **Conditions to Purchaser's Obligations.** Purchaser's obligations under this Agreement are conditioned on the occurrence of the following conditions to Purchaser's reasonable satisfaction:
 - i. Receipt of all necessary permits and approvals by Seller;

- ii. Prior to beginning construction, Seller shall have secured financing for the System and provided Purchaser a letter of commitment, such letter being reasonably satisfactory to Purchaser, from Seller's financial partner or partners, and lender, if applicable;
 - iii. Occurrence of Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See Exhibit 1); and
 - iv. Seller must complete all items required to receive Purchaser's approval (Final Acceptance) of System within 90 calendar days of Commercial Operation Date.
- c. **Failure of Conditions.** If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement with the exception of the conditions in Sections 6(b)(iv), above. Notwithstanding anything to the contrary in this Agreement, each party's respective termination rights under this Section 6(c) shall automatically terminate and have no further force or effect as of the date of substantial completion of the System.

7. **Seller's Rights and Obligations.**

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain the following permits and approvals, at its sole cost and expense:
- i. any City zoning, land use and building permits required to construct, install and operate the System; and
 - ii. any agreements and approvals from the Utility Company necessary in order to interconnect the System to the Utility Company's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors or resulting from Purchaser's or any of its contractors' (other than seller), agents', representatives' or invitees' negligence, willful misconduct or

breach of this agreement. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

- c. **Breakdown Notice.** Seller shall notify Purchaser within the fastest practical commercially reasonable period (normally, within twenty-four (24) hours) following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- d. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that (i) the Seller receives Purchaser approval prior to suspension except in situations where there is imminent risk of damage to persons or property,, (ii) suspension does not occur during peak demand periods as defined by the Utility Company rate structure in effect at the time of suspension and (iii) that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- e. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. Seller is responsible for the quality of the work performed by its contractors and subcontractors.
- f. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility and the Site free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility or the Site following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility, Site, or System in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as Seller provides a statutory bond or other reasonable assurance of payment to the Purchaser, subject to the prior written consent and authorization of Purchaser, that either removes such lien from title to the Facility, Site, or System or that assures that any adverse judgment with respect to such lien will be paid without affecting title to the Facility or the Site. Purchaser's consent and authorization to such statutory bond or other reasonable assurance of payment shall not be unreasonably withheld. In the event that a lien impairs or makes more difficult Purchaser's efforts to sell, mortgage, borrow against, or otherwise encumber Purchaser's real property, Seller, upon written request by Purchaser, shall act immediately to secure a release of lien within 14 days from the date of the notice to do same. Purchaser may exhibit, post or place on the Site and maintain any notice or notices that Purchaser deems necessary or

proper to protect Purchaser and the Facility and the Site against liens or any other claims, whether similar or dissimilar.

- g. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The express warranties set forth in this Agreement shall be the exclusive warranties provided by Seller. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies.

8. **Purchaser's Rights and Obligations.**

- a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors a non-exclusive, irrevocable license (the "License") for access to, on, over, under and across the City Premises as more particularly described in Appendix A to Exhibit 4, the Site for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights with respect to the System set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility Company's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Site except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "License Term"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Site are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The Parties agree that City shall record in the County Recorder's Office a memorandum of license in the form set out in Exhibit 4 in reflecting City's granting of an irrevocable license as further provided for in this Agreement.
- b. **OSHA Compliance.** The Parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware

pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to approve or disapprove such alterations or repairs. Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors in breach of this Section 8.d. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for three (3) full twenty-four (24) hour days (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. Any Outage that is less than any calendar day shall be deemed a full 24 hour outage. In the event that Scheduled Outages exceed three (3) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Section 4 of this Agreement.
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim with respect to the System, shall promptly (within 14 days after such notification) cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Seller will not take any action that negatively affects Purchaser's ability to use the Site for lease financing or other real estate transactions not affecting the System or the Purchaser's ability to purchase the electric energy the System produces.
- g. **Security.** Purchaser shall be responsible for maintaining the physical security of the Facility and the System. Purchaser will not conduct activities on, in or about the Site or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

- h. Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall reasonably ensure that the System remain free of overshadowing or other blocked access to sunlight during the Term. If necessary, Purchaser will use best efforts to secure solar easement for the Premises to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Seller shall provide assistance to Purchaser in seeking a solar easement; however, Purchaser shall bear all costs and expenses related to obtaining any such easement.
- i. Data Line.** Purchaser shall give reasonable effort to provide Seller a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. The logistics of providing an acceptable data line for the site shall be dealt with during System design.
- j. Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon Purchaser's discovery of (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. Facility Damage.** If the Facility or any portion thereof is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall, subject to Section 8.d., promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility subject to Section 8.d. or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

9. Compliance with all Laws; Change of Law.

- a. Compliance.** The Parties shall at all times comply with all applicable laws, ordinances, rules and regulations. Seller shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under.
- b. "Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any

applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

- c. **Effect of Change in Law.** If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. Relocation of System. If Purchaser ceases to conduct business operations at and/or vacates the Facility or Seller is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with either a) an acceptable substitute Purchaser of energy at the same Facility (of equal or better credit rating), or b) a mutually agreeable substitute premises located within the same Utility Company district as the terminated System or in a location with similar Utility Company rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System will be relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties, as defined herein, in connection with the substitute facility. Purchaser shall pay all reasonable costs associated with relocation of the System, including costs of energy that otherwise would have been produced during the period of the relocation, and all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during the period of time the System is not in operation due to the relocation and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its

prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System caused by Seller's negligence or willful misconduct, but not for normal wear and tear or damage normally arising in the removal of similar systems. If the substitute facility has inferior Insulation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute Purchaser or facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser, subject to payment by Purchaser of the Termination Payment.

11. Removal of System at Expiration. Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility and Site on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. The Facility and Site shall be returned to their original condition, including the removal of System mounting pads or other support structures (excluding ordinary wear and tear of the Facility and Site absent the System having been installed). In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof and structurally sound as it was prior to installation of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility and Site in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right to remove the System at Seller's cost.

12. Measurement. Electricity delivered to the Facility shall be measured by a monitoring system installed and maintained by Seller as part of the System.

- a. **Meter Testing and Calibration.** Upon Purchaser's written request, Seller shall furnish a copy of all technical specifications and accuracy calibrations for each meter, as well as all metering data and energy production calculations. Seller shall have the meter tested once during the System Testing period and then every three (3) years thereafter at Seller's expense by an independent third party approved by Purchaser. Purchaser shall be allowed to observe the meter test, and Seller shall provide notice of the testing to Purchaser at least ten (10) Business Days prior to the test date. Seller shall provide signed copies of the results of the meter test to Purchaser. In addition to the initial and triennial tests, Seller shall test the meter at any reasonable time upon the request of Purchaser. Purchaser shall reimburse Seller for the cost of the additional tests requested by Purchaser, unless such testing demonstrates that the meter was operating outside of industry standard tolerance allowances or outside of standards defined by the California Energy Commission for meter calibration and operation.
- b. **Data Audits and Inspections.** Once per calendar year, Purchaser shall have the right to audit all such meter data upon reasonable notice, and any such audit shall be at Purchaser's sole cost. Purchaser shall have the right of access to all meters at reasonable times for the purpose of verifying readings and calibrations.
- c. **Adjustments.** If testing of a meter indicates that such meter is in error by more than two percent (2%), then Seller shall promptly repair or replace such meter. Seller shall make a corresponding adjustment to the records of the amount of electricity and corresponding payment based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if

such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (½) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the meter was placed into service; provided, however, that such period shall in no case exceed two (2) years. The invoice following such meter repair or replacement shall contain either (a) a credit, or (b) an additional charge equal to the product of (x) the agreed upon electricity adjustment multiplied by (y) the relevant Contract Price as set forth in Exhibit 1.

13. **Default and Remedies.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":
- i. failure of a Party to pay any amount due and payable under this Agreement as described in Section 4d. Payment Terms, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay;
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if the Defaulting Party initiates such cure with the thirty (30) day period and diligently continues such cure to completion;
 - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
 - iv. Purchaser loses its rights to occupy and enjoy the Premises and cannot relocate the System pursuant to Section 10 of this Agreement;
 - v. a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect; or
 - vi. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System.

- b. **Remedies.** Subject to the dispute resolutions conditions stated below, on the occurrence of a Default Event, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon ten (10) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. Before any default remedy is pursued by an aggrieved Party pursuant to Section 21.b, the following dispute resolution steps shall first be exhausted:
- i. **Meet and Confer.** An officer of each Party shall conduct a meet and confer conference to mutually resolve any conflict or alleged default. The meet and confer conference may be called by either Party and shall be held within 10 days from the date that a request for the conference is made. If the meet and confer conference is not successful then resort shall be made to non-binding mediation set forth below;
 - ii. **Non-Binding Mediation.** The Parties shall mutually call for a non-binding mediation process to be conducted under the auspices to of the judicial mediation services of "JAMS" Riverside County Offices. The Parties shall arrange to have the mediation conducted within 60 days from date of the call for mediation.
- c. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
- i. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be as set forth in Exhibit 1 attached hereto. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
 - ii. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the utility; (iii) any removal costs incurred by Purchaser; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

- d. **Obligations Following Termination.** If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13b, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.
- e. **Limitation on Remedies.** For purposes of this Agreement, Seller hereby accepts the area of the Site in an "As-Is" condition and acknowledges that Purchaser has not made any statements or representations or warranties regarding the area of the Site, and Seller is not relying upon any statement or representation or warranty of Purchaser as to the fitness of the area of the Site for any particular use of Seller or any other matter.
- f. **Attorney's fees.** In the event of a Default Event, each Party shall individually bear the cost of attorney's fees to prosecute any legal action. Neither Party is liable for attorney's fees for the other Party in the event of a dispute or the resolution thereof.

14. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
 - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is a valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:
 - i. **License.** Purchaser has the full right, power and authority to grant the License contained in Section 8(a) of this Agreement. Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.

- ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
 - iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
 - iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - v. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
- c. **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser the following:
- i. License. Seller is properly licensed for installation of System and will design and construct this energy project in full and complete conformance with the project specifications attached as exhibits to this Agreement.
 - ii. Other Agreements. Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller or its assigns are bound.
 - iii. Accuracy of Information. All information provided by Seller to Purchaser, as it pertains to the System, the System design, the System's components, and the System's performance, is accurate in all material respects.
 - iv. Seller Status. As of the date of execution hereof, Seller (1) is not intending to dedicate its property to public use, (2) is not a "public utility" (as defined in relevant California law) and (3) is not an electric utility subject to rate regulation by any Governmental Authority.
 - v. Ability. Seller has the ability to obtain the information, materials, technology required to perform its obligations under this Agreement. Further, Seller has the ability to obtain all funding required to acquire, deliver, install, operate and maintain the System.
 - vi. Preparation. Seller is prepared to provide the services required to satisfy the terms and conditions of this Agreement.
 - vii. Financial. Seller has the financial wherewithal to design, construct, and operate this energy project.

15. **System and Facility Insurance.**

- a. **Seller's Insurance Coverage.** Before the City Council approves this Agreement, Seller agrees to obtain and shall maintain in full force at all times during the duration and performance of this Agreement the policies of insurance specified in this Section. Such insurance must be in accordance with this agreement, shall be placed with insurers with a current A.M. Best's rating of no less than A:VII (or, in the case of Workers' Compensation insurance, the State Compensation Insurance Fund of California), and shall name the Purchaser as an additional insured on General Liability and Automobile Liability policies.

Prior to execution of this Agreement and prior to commencement of any work, Seller shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this Agreement. However, failure to do so shall not operate as a waiver of these insurance requirements. The following insurance conditions shall be followed:

- i. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either Party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Purchaser, with the exception for ten (10) days for nonpayment of premium.
 - ii. Seller shall provide proof of "Per Project Aggregate" under Seller's General Liability Policy. Any deductibles, aggregate limits, or self-insured retentions, must be declared to the Purchaser.
 - iii. Seller shall, at its expense, maintain in effect at all times during the performance of work under the Agreement not less than the following coverage and limits of insurance, as outlined herein. The maintenance by Seller of the following coverage and limits of insurance is a material element of this Agreement. The failure of the Seller to maintain or renew coverage, provided it is available at a reasonable cost or to provide evidence of renewal, may be treated as a material breach of this Agreement.
- b. **Worker's Compensation and Employer's Liability Insurance.** Insurance to protect Seller, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. In addition to obtaining its own insurance, Seller shall require its contractors and subcontractors similarly to obtain such insurance for their respective employees. With respect to workers' compensation insurance, Seller shall execute a certificate in compliance with Labor Code Section 1861 on the form attached to this Agreement as Exhibit 6. Seller shall maintain in effect at all times during the performance of work hereunder employer's liability insurance in an amount not less than \$1,000,000.00 per accident for bodily injury and disease and \$1,000,000 disease – policy limit.
- c. **Commercial General and Automobile Liability Insurance.**

- i. The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of commercial general liability insurance coverage shall not be less than \$2,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury and property damage, or any combination of the three. Such limits may be satisfied by an excess liability policy. Seller shall be solely responsible to the insurance company for any deductibles for claims under this policy.
- ii. Seller shall maintain during the term of this Agreement automobile liability insurance providing protection against claims of bodily injury and property damage arising out of the ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles. Coverage shall be at least as broad as "Insurance Services Office Business Auto Coverage Form CA 0001," symbol 1 (any auto). Use of any symbols other than symbol 1 for automobile liability insurance shall not be permitted without written permission of the Purchaser. The limits shall not be less than and may be satisfied by an excess liability policy:

Combined Single Limit (\$2,000,000.00)	Two	Million	Dollars
Or, If Split Limits			
Bodily Injury Liability (\$1,000,000.00)	One	Million	Dollars
	Per Person		
(\$2,000,000.00)	Two	Million	Dollars
	Per Accident		
Property Damage Liability (\$1,000,000.00)	One	Million	Dollars
	Per Accident		

- iii. The commercial general liability insurance and the automobile liability insurance coverages shall also include, or be endorsed to include, the following:
 - 1. Provision or endorsement naming the Purchaser and each of its officers, officials, employees, volunteers, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Agreement; liability arising out of activities performed by or on behalf of Seller; premises owned, occupied or used by Seller; or automobiles owned, leased, hired or borrowed by Seller. Blanket additional insured endorsements will be acceptable.

2. Provision or endorsement stating that for any claims related to the System or work to be performed by Seller under this Agreement, Seller's insurance coverage shall be primary insurance as respects the Purchaser, its officers, officials, employees, volunteers, and agents to the extent the Purchaser is an additional insured. Any insurance or self insurance maintained by the Purchaser, its officers, officials, employees or volunteers shall be in excess of Seller's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment, unless and until all limits available under Seller's insurance policy/policies have been paid in accordance with the liability.
 3. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by Seller under the Agreement, set forth in Section 12 hereof.
- d. **Excess Liability Policy.** Seller will secure and maintain in full force, during the term of this Agreement, an excess liability policy with limits of not less than \$5,000,000 to respond to claims in excess of the underlying policies, except Professional Liability. Purchaser shall be named as an additional insured on this policy.
 - e. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the Party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled or terminated, (ii) be written on an occurrence basis, (iii) with respect to the liability insurance policies (except for Employer's Liability), include the other Party as an additional insured as its interest may appear, (iv) provide for primary coverage without right of contribution from any insurance of the other Party.
 - f. **Removal and Restoration Bond.** No later than one year prior to the expiration of the Term, Seller shall provide to City a removal and restoration bond in the amount of Three Hundred Thousand (\$300,000) Dollars to provide compensation to City for any liability costs it may incur to remove the System in the event of a Default Event by Seller, including but not limited to insolvency or bankruptcy. The bond shall be: (i) maintained at all times during the final year of the Term and (ii) be subject to the approval of the office of the City Attorney, which approval shall not be unreasonably withheld, conditioned or delayed.

16. Ownership; Option to Purchase.

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement.

The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises.

- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to (i) with respect to an option exercised at the end of the sixth (6th) or tenth (10th) Contract Years the **greater** of (A) the amount set forth at such time in the Purchase Option Price schedule in Exhibit 1, and (B) the Fair Market Value of the System, and (ii) with respect to an option exercised at the end of the Initial Term or an Additional Term, the Fair Market Value of the System. The "**Fair Market Value**" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the purchase option price but otherwise disclaims all warranties of any kind, express or implied, concerning the System, "as is, where is, with all faults"; provided that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Seller agrees to defend, indemnify and hold harmless Purchaser, and its elected and appointed officers, employees, and agents (the "**Indemnified Parties**") from every claim or demand made, and every liability, loss, personal injury, damage, expense, including but not limited to reasonable attorney's fees ("**Liabilities**"), to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the Seller in connection with this Agreement; provided, however, that nothing herein shall require the Seller to indemnify any Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party.
- b. **Third-Party Claims.** Seller, at its own expense, cost, and risk, shall defend any and all third party claims, actions, suits, or other proceedings, including any and all appeals thereof, that may be brought or instituted against and Indemnified Party on account of or founded upon any cause, damage, or injury for which Seller is responsible under Section 17.a ("**Third-Party Claim**") and shall pay or satisfy any final and non-appealable judgment that may be rendered against an Indemnified Party in any action, suit or other proceedings as a result thereof. Seller shall select counsel to provide such defense, subject to acceptance by Purchaser, which acceptance shall not unreasonably be withheld. Purchaser may, however, select separate counsel if both Parties are defendants in the Third-Party Claim and such defense or other form of participation is not reasonably available to the Seller. The Seller shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. Purchaser may also, at the sole cost and expense of the Seller, assume the defense of any Third-Party Claim if the Seller fails to assume the defense of the Third-Party Claim within a reasonable time. Seller shall not settle any Third-Party Claim unless it has obtained the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed. The Seller shall have no liability for any Third-Party Claim for which notice of such Third-Party Claim is not provided by the Purchaser promptly after its receipt of information regarding the possibility of such Third-Party Claim or the commencement of such Third-Party Claim, if the failure to give timely notice prejudices the Seller.
- c. **No Consequential Damages.** Except with respect to indemnification for Third-Party Claims pursuant to Section 17.b and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- d. **Right of Action.** Seller acknowledges Purchaser's policy not to include indemnity obligations in contracts to which it is a party. Notwithstanding, Purchaser agrees that the non-inclusion of a Purchaser indemnification obligation this Agreement does not preclude Seller from pursuing an indemnity claim against Purchaser in accordance with Section 21.b (Arbitration and Attorney's Fees).

18. **Force Majeure.**

- a. **Excuse.** Subject to Section 18.d below, and except payment obligations or as otherwise expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:
- i. such Force Majeure Event is not attributable to fault or negligence on the part of that Party;
 - ii. such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
 - iii. despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.
- b. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming to be excused by the event including, without limitation subject to this Article:
- i. acts of Nature such as storms, floods, lightning and earthquakes, range or forest fires and objects striking the earth from space (such as meteorites);
 - ii. sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - iii. theft, vandalism, accidents, or construction related power interruptions and mechanical moves;
 - iv. Utility Company Transmission System outage or failure not caused by Seller or Seller activities or by Purchaser or Purchaser activities;
 - v. War (declared or undeclared), terrorism, riot, acts of a public enemy or other civil disturbance;
 - vi. strike, walkout, lockout, work stoppage, slowdown or other significant labor dispute;
 - vii. curtailment by the ISO, or its successor, but only to the extent that the ISO declares a "Force Majeure" under the ISO Tariff; and
 - viii. unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent such unavailability is the result of the Party claiming to be excused by the Force Majeure Event to have exercised reasonable diligence)

- c. **Exclusion.** "Force Majeure Event" does not include the following:
- i. economic hardship of either Party;
 - ii. an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in Section 18.a;
 - iii. failure or delay in the granting of Permits;
 - iv. curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff; or
 - v. insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event.
- d. **Conditions.** In addition to the conditions set forth in Section 18.a above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:
- i. provides prompt notice of such Force Majeure Event, as soon as reasonably practicable after determining the existence of the Force Majeure Event, to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
 - ii. exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - iii. expeditiously takes reasonable action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;
 - iv. exercises all reasonable efforts to mitigate or limit damages to the other Party; and
 - v. provides prompt notice, as soon as reasonably practicable following knowledge of the cessation, to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.

- e. **Termination Due To Force Majeure Event.** In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force

Majeure event, the other Party may terminate this Agreement, without liability of either Party to the other (except for amounts accrued and unpaid), upon thirty (30) days written notice after the Force Majeure Event. In the event that a Generating Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and the Agreement as it relates to that Generating Facility is thereby terminated, Seller shall be responsible for removing the applicable Generating Facility and restoring the Premises where the applicable Generating Facility was installed to its pre-installation condition within ninety (90) days after provision of written notice. Seller agrees to work in good faith to keep Purchaser informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in the System being unable to function for a period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Purchaser with a plan to restore the System.

19. **Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv), subject to the written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement

that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19.a.(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. Public Records Act and Disclosure. The Purchaser is a public agency subject to the disclosure requirements of the California Public Records Act ("**CPRA**"), and therefore records of Seller maintained by it in its role as Seller for this project are subject to public disclosure unless certain Seller records are expressly exempt from disclosure under the CPRA. If Seller proprietary information is contained in documents or information submitted to Purchaser, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "**CONFIDENTIAL AND PROPRIETARY,**" and identify the specific lines containing the information. In the event of a request for such information, the Purchaser will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are clearly and expressly exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate judicial remedy before the Purchaser's deadline for responding to the CPRA request. Seller further agrees that it shall defend, indemnify and hold Purchaser harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by Purchaser of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

21. General Provisions.

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in the greater Sacramento metropolitan area, subject to the process for addressing default remedies set forth in Section 13.b. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and shall be non-binding. The Parties reserve the right to submit any dispute, following arbitration, to a court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. Each Party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration, mediation or litigation, or any award resulting there from.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or

regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7(g) (No Warranty), Section 10 (Relocation of System), Section 11 (Removal of System at Expiration), Section 14 (Representations and Warranties), Section 17 (Indemnification and Limits of Liability), Section 20 (Public Records Act and Disclosure), Section 21.a (Choice of Law), Section 21.b (Arbitration and Attorneys' Fees), Section 21.c (Notices), Section 21.g (Comparative Negligence), Section 21.h (Non-Dedication of Facilities), Section 21.j (Service Contract), Section 21.k (No Partnership), Section 21.l (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 21.n (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or

written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Purchaser Approvals.** All approvals to be provided by Purchaser under this Agreement, including, without limitation, City approvals required under Exhibit 6, shall be based on prudent solar power industry practices applicable to the design, construction and/or operation of photovoltaic solar systems similar to the System and shall not be unreasonably withheld, conditioned or delayed; provided, however, that if Purchaser approval is not provided within 10 business days after a submission for approval, such approval shall be deemed granted.
- p. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

End of Agreement Terms and Conditions

[SIGNATURES ON NEXT PAGE]

AGREEMENT SIGNATURE PAGE

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

IN WITNESS WHEREOF, the Parties have executed and entered into the Agreement as of the date first written above.

“PURCHASER”

ATTEST:

CITY OF PALM SPRINGS, a California charter city and municipal corporation

By: _____
James Thompson
City Clerk

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

**“SELLER”
SOLARCITY CORPORATION, a Delaware corporation**

Corporations require two notarized signatures: One signature **must** be from the Chairman of Board, President, or any Vice President. The second signature **must** be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

End of Signature Page

EXHIBITS

1. Pricing Attachment
2. System Description
3. Engineering Design & Construction Requirements and Service Agreement
4. Form of Memo of License
5. Credit Information
6. Certificate in Compliance with Labor Code Section 1861

Exhibit 1
Pricing Attachment

1. **Initial Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to Two (2) Additional Terms of Five (5) years each.
3. **Environmental Incentives and Environmental Attributes Accrue to Seller, unless otherwise prohibited by statute or regulation of any Governmental Authority.**

4. **Contract Price:**

YEAR	CONTRACT PRICE PER KWH
1	\$0.0780
2	\$0.0780
3	\$0.0780
4	\$0.0780
5	\$0.0780
6	\$0.0780
7	\$0.0780
8	\$0.0780
9	\$0.0780
10	\$0.0780
11	\$0.0780
12	\$0.0780
13	\$0.0780
14	\$0.0780
15	\$0.0780
16	\$0.0780
17	\$0.0780
18	\$0.0780
19	\$0.0780
20	\$0.0780

There shall be an annual PPA escalator of 0%.

5. **Condition Satisfaction Date:** (Conditions defined in Agreement Section 6)
6. **Anticipated Commercial Operation Date:** 270 days after the Effective Date.
7. **Outside Commercial Operation Date:** 365 days after the Effective Date.
8. **Purchase Option**

YEAR	PURCHASE PRICE
6	\$1,592,858
10	\$1,442,726
20	Fair Market Value

*Purchaser shall have the right to purchase the System at the greater of the price set forth above and the then current fair market value.

9. Termination Payment:

YEAR	TERMINATION PAYMENT
1	\$3,124,021
2	\$2,721,810
3	\$2,189,059
4	\$1,769,549
5	\$1,417,261
6	\$1,058,040
7	\$953,231
8	\$901,815
9	\$848,324
10	\$792,652
11	\$734,686
12	\$674,310
13	\$611,400
14	\$545,829
15	\$477,459
16	\$406,149
17	\$331,750
18	\$254,104
19	\$173,047
20	\$88,406

End of Exhibit 1

Exhibit 2

System Description and Delivery Point

1. **System Location:** 277 N Avenida Caballeros, Palm Springs, CA 92262
2. **System Size (DC kW):** 848.16 kW
3. **Expected First Year Energy Production:** 1,309,002 kWh
4. **Expected Module(s):** Poly 310W
5. **Expected Inverter(s):** Solectria PVI 28TL
6. **Expected Structure:** Zep Solar ZSPeak Non-Penetrating
7. **Includes:** Construction, & Maintenance Service Agreement, Prevailing Wages
8. **Excludes:** Electrical panel upgrade, structural modifications, sub-surface conditions
9. **Delivery Point and Site Access:** Solar Company shall attach a schematic that contains the:
 - (i) array;
 - (ii) Delivery Point; and
 - (iii) access points needed to install and service System (building access, electrical room, stairs etc.)

End of Exhibit 2

Exhibit 3
Project Layout

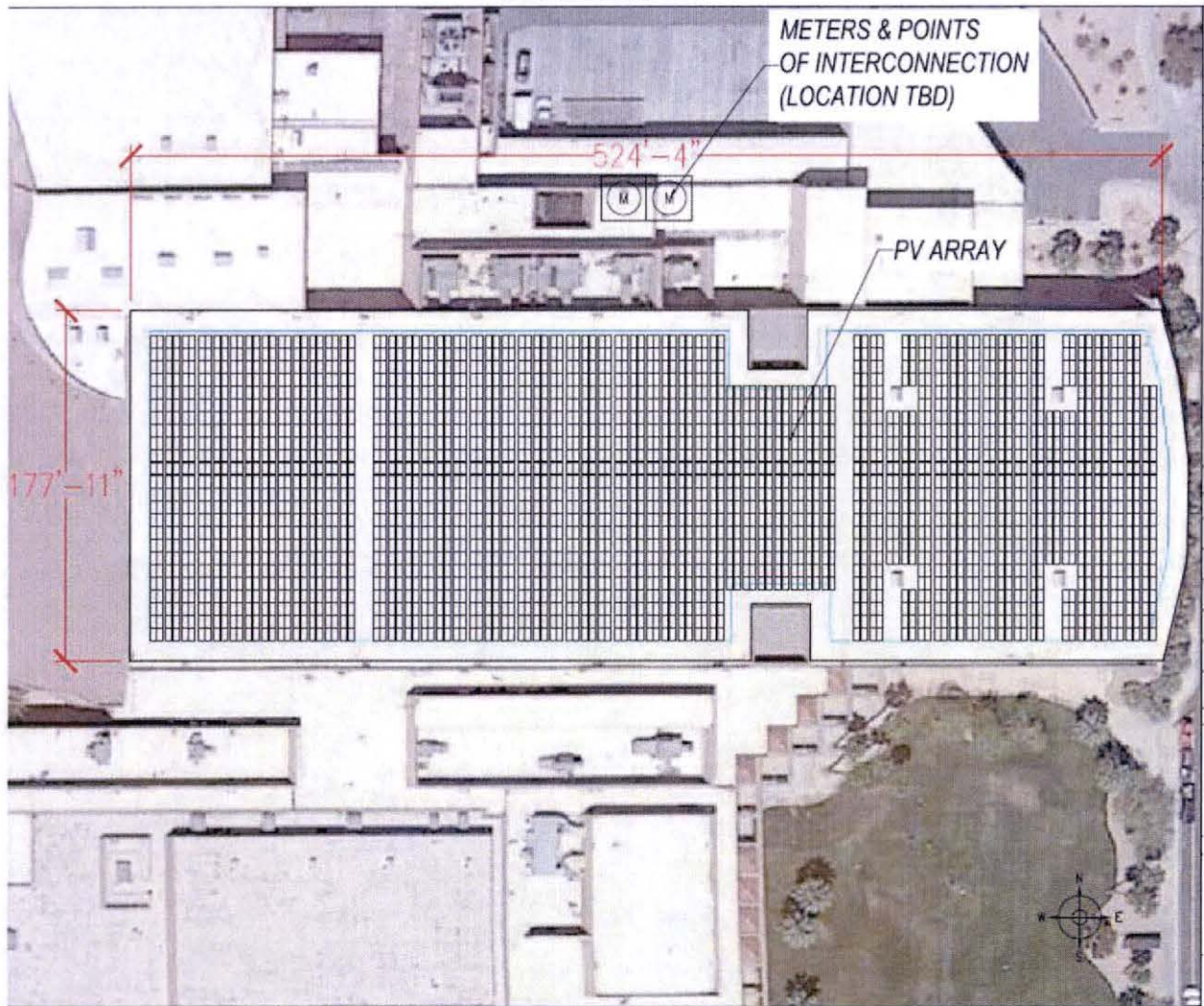


Exhibit 4

Form of Memorandum of License

**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**)
)
)
City Clerk)
City of Palm Springs)
)
)

(space above this line reserved for recorder's use)

Exempt from Recording fees

MEMORANDUM OF LICENSE

THIS MEMORANDUM OF LICENSE is made and entered into this ___ day of _____, 20___, (the "Effective Date") by and between the City of Palm Springs ("Licensor"), and _____ ("Licensee").

A. Licensor is the owner of certain real property ("Premises"), located in the City of Palm Springs, California, attached to this License as Exhibit A and incorporated herein by reference.

B. Licensor and Licensee have entered into a Solar Power Purchase Agreement("the Agreement") dated _____20___, under which Licensee is selling energy generated by a photovoltaic electric generating system (the "System") to Licensor. The Agreement is for a term of Twenty (20) years, beginning on the Effective Date and ending on the Twenty (20) year anniversary of the Commercial Operation Date, as defined in the Agreement, with an option to extend the Agreement for up to Two (2) extended terms of Five (5) years each. Pursuant to the Agreement, Licensor has granted Licensee a revocable, non-exclusive license ("License") over the Premises for the purposes and on the terms set forth in the Agreement.

Licensor and Licensee agree as follows:

1. Licensor hereby grants to Licensee the License over the Premises on and subject to the terms and conditions set forth in the Agreement which is incorporated herein by reference.
2. The term of the License begins on the Effective Date and continues until one hundred and twenty (120) days after the termination of the Agreement.
3. This Memorandum of License shall not be deemed to modify, alter or amend in any way the provisions of the License or the Agreement. In the event of any conflict between the terms of the License and/or the Agreement and this Memorandum, the terms of the License and/or the Agreement, as applicable, shall control.

The undersigned have executed this Memorandum of License as of the date first written above.

LICENSOR

Client

LICENSEE

Solar Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[NOTARY ACKNOWLEDGEMENT PAGE FOLLOWS]

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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 signature(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 of Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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 signature(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 of Notary Public

**Appendix A
To Memorandum of License**

Legal Description of Premises

That certain real property located in the County of Riverside, State of California described as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, WITH A SITUS ADDRESS OF 277 N AVENIDA CABALLEROS, PALM SPRINGS, CA 92262-6440 CURRENTLY OWNED BY PALM SPRINGS AUDIO VISUALS INC HAVING A TAX ASSESSOR NUMBER OF 009-613-839 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS 9.15 ACRES IN LOT 2 MB 200/047 TR 20485 AMENDED .

End of Exhibit 4

Exhibit 5

Credit Information

Promptly following the execution of this Agreement Purchaser shall supply *Solar Company* with the following credit information:

APPLICANTS INFORMATION							
Name:						Tax ID:	
Previous & Other Names:				Website:			
Corporate Address:							
City, State, Zip							
Phone Number:				Fax Number			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Property Address for Solar Installation:			State:		Zip Code:	Owner Occupied <input type="radio"/> YES <input type="radio"/> NO	
Property Type		Insurance Agent Name		Agents Phone:	Name of Landlord if Not Owner Occupied		
Information Requested							
<u>Corporate Records</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> Last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							

The above information and any information attached is furnished to *Solar Company* and its affiliates ("Lender") in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that the Lender is relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warranty and certify that the information provided herein is true, correct and complete. The Lender is authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give the Lender any information it may have about you. You authorize the Lender to answer questions about its credit experience with you. Subject to any non-disclosure agreement between you and Lender, this form and any other information given to the Lender shall be the Lender's property.

If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact *Solar Company* at *Phone, Address*. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. *Solar Company* is an equal opportunity lender.

Signature

Title

Date

End of Exhibit 5

EXHIBIT 6

SCOPE OF WORK AND REQUIREMENTS

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1.0 PROJECT MANAGEMENT

Design-Builder shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall manage all design, procurement, construction, and commissioning phases of the Project. The construction of PV systems shall be accomplished by Design-Builder with an on-site construction management team. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the City.

2.0 PROJECT SCHEDULE

A Project Schedule is to be prepared and submitted to the City within 14 days of Agreement execution. The City will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the City may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities, dependencies, and sequencing of tasks. In particular, Design-Builder shall include City review of submittals on the Critical Path. The Project Schedule shall describe all elements of project design, equipment procurement, construction and commissioning, and shall be submitted in electronic format (MS Project or Primavera P6). Adobe Acrobat is not acceptable. The schedule shall also reflect the requirement that construction activities must be coordinated to minimize impacts on normal operations at each site, including ongoing construction activities.

Sufficient information shall be shown on the Project Schedule to enable proper control and monitoring of the Work. The Project Schedule shall show the intended time for starting and completing each activity; the duration of each activity; submittal and approval times; design; delivery of materials, equipment and software; all testing; and other significant items related to the progress of the Work. The Project Schedule shall include a CPM network diagram of sufficient detail to show how Mandatory Milestones are intended to be met. If a schedule submitted by Design-Builder includes changes affecting the achievement of Mandatory Milestones, Design-Builder should clearly identify and justify those changes.

Design-Builder is encouraged to phase the Work in a way that supports efficient and effective delivery of design and build services. The following Mandatory Milestones shall be reflected in the schedule and where applicable, represents the dates upon which each milestone is to be achieved for all sites in the Agreement.

- Project Schedule – Convention Center PPA Project
- Contract Award: May 1, 2016
- Contract Execution: June 16, 2016
- Notice to Proceed: June 23, 2016
- Site Surveys: July 5-8, 2016
- System Design and Permit Start: July 25, 2016
- Permit in Hand: October 30, 2016
- Materials Procurement: November 3-7, 2016
- Site Preparation: November 10-15, 2016
- Construction Start: November 17, 2016
- Construction Complete: January 16, 2017
- Utility Permission To Operate: March 13, 2017
- Testing Period: March 14, 2017
- Final Completion: April 14, 2017
- CSI Deadline (with extension): October 15, 2017

3.0 SUBMITTALS

Design-Builder shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

Agreement Submittals

Submittal	Submittal Date	RFP Section
I. System Design		5.0
a. System Design Documentation	At each design milestone	5.1
b. Warranties	At Construction Documents milestone	5.5.15
c. Testing Plan	At Construction Documents milestone	7
d. Training Plan	At Construction Documents milestone	10
e. Power production modeling	At Construction Documents milestone	
II. Procurements and Construction		6.0
a. Quality Assurance / Quality Control (QA/QC) Plan	30 days before commencement of construction	6.3
b. As-built Documentation	After completion of Proving Period	6.1
III. Testing		7.0
a. Acceptance Test Results	After Acceptance Test	7.1
b. Startup Test Results	After Startup Test	7.2
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	7.3
d. Proving Period Report	30 days after System Startup	7.3
IV. Training		10.0
a. Training Materials	30 days before Training Session	10.0
b. Monitoring Manual	30 days before Training Session	5.5.14
c. Operations & Maintenance Manual	30 days before Training Session	8.5

4.0 Solar Incentives

[Intentionally omitted]

5.0 SYSTEM DESIGN

5.1 Design Review Process/Phases

The City will review and approve design documentation based on the requirements in this RFP. Additional documents may be requested by the City as needed. The precise organization and format of the design submittals shall be agreed upon by Design-Builder, and the City prior to the first design submission. The City will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Design-Builder shall provide additional detail, as required, at each successive stage of the Design Review. Design-Builder shall not order equipment and materials until Schematic Design submittals have been approved. Design-Builder shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The City will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Design-Builder shall not enter a subsequent design phase without the approval of the City.

Design-Builder shall be held solely responsible for obtaining approvals from the City, including revising designs as necessary until they are given approval by the City and all other required entities and organizations. A description of requirements for each design phase is provided below. System design shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations for construction projects of jurisdictions with authority over the City. Design-Builder is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. System designs must take into account City aesthetic issues and not conflict with any current City operations.

5.1.1 Schematic Design

Design-Builder shall prepare Schematic Design documents consisting of drawings and other documents illustrating the scale and relationship of Project components, including but not limited to, schematic design studies, site utilization plans, PV array layouts, a shading analysis, electrical single-line diagrams, equipment lists and bills of material, and equipment cut sheets or specifications.

5.1.2 Design Development

Design Development documents shall consist of elevations, cross sections, and other drawings and documents necessary to depict the design of the Project. This submittal shall include architectural, structural, geotechnical, mechanical and electrical design documents and equipment specifications to illustrate the size, character, and quality of the Project and demonstrate that it meets the performance specifications defined in this RFP. The Design Development documents shall represent 100% of the intended scope for the Project.

5.1.3 Construction Documents

Design-Builder shall prepare Construction Documents (CDs) depicting the detailed construction requirements of the Project. CDs shall conform to all applicable governmental, regulatory, and code requirements, and all pertinent federal, state, and local permitting agencies. The CDs shall show the work to be done, as well as the materials, workmanship, finishes, and equipment required for the Project. CDs shall comply with and illustrate methods to achieve the performance specifications of this RFP. CDs shall be stamped by the engineer of record and any other required engineering disciplines.

5.2. *Design-Builders' License Classification*

In accordance with the provisions of California Public Contract Code §3300, the City requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Contractor License (B) and Electrical Contractor License (C-10). It shall be acceptable for a Respondent that does not possess a C-10 License to list a Subcontractor with a C-10 License. A Solar Contractor License (C-46) is desired in addition, but not mandatory.

5.3. *Design Submittals*

Design-Builder shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the City. Each submittal package shall include, at a minimum, the required elements that convey in sufficient detail for each phase of the design, the necessary documentation as follows:

- Site Layout Drawings
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Fire Access Lane Details (For the parking lot.)
- Single-Line Diagrams
- Network Connection Diagrams
- Architectural Drawings
- Mechanical Drawings
- Geotechnical Drawings
- Manufacturer's Cut Sheets
- Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Design-Builder shall include adequate time for City review and approval of submittals, as well as re-submittals and re-reviews. Minimum City review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

5.5. Technical Requirements

5.5.1 General Considerations

All documentation and components furnished by Design-Builder shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the City and all applicable industry codes and standards. Reference is made in these specifications to various standards under which the Work is to be performed or tested. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Southern California Edison (SCE) Interconnection Requirements, and all other federal, state, and local jurisdictions having authority.

5.5.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Electronic Industries Association (EIA) Standard 569
- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- National Electric Code (NEC)
- Insulated Power Cable Engineers Association (IPCEA)
- Certified Ballast Manufacturers Association (CBMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- Pacific Gas and Electric Utility Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- American Disabilities Act (ADA)
- American Society for Testing and Materials (ASTM)
- National Electrical Contractors Association (NECA)
- National Electrical Testing Association (NETA)
- International Building Code (IBC)
- All other Authorities Having Jurisdiction

5.5.3 Modules

In addition to the above, the PV modules proposed by Design-Builder shall comply with at least, but not limited to, the following:

- IEEE 1262 "Recommended Practice for Qualifications of Photovoltaic Modules".
- Modules shall be new, undamaged, fully warranted without defect.
- Modules shall comply with the State of California SB1 Guidelines for Eligibility, listed at: http://www.gosolarcalifornia.org/equipment/pv_modules.php
- Modules shall have minimum maintenance requirements and high reliability, have a minimum 25-year design life, and be designed for normal, unattended operation.
- Acceptable mounting methods for unframed modules shall be provided by the manufacturer. Bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- If PV modules using hazardous materials are to be provided, then the environmental impact of the

hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

5.5.4 Inverters

In addition to the above, inverters proposed by Design-Builder must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all SCE interconnection requirements.
- Inverters shall comply with the State of California SB1 Guidelines for Eligibility, listed at: <http://www.gosolarcalifornia.org/equipment/inverters.php>
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems”.
- Inverters must automatically reset and resume normal operation after a power limiting operation.
- The inverter shall be capable of continuous operation into a system with voltage variation of plus or minus 10% of nominal. The inverter shall operate in an ambient temperature range of -20°C to +50°C.
- Inverters shall include all necessary self-protective features and self-diagnostic features to protect the inverter from damage (in the event of component failure or from parameters beyond normal operating range due to internal or external causes). The self protective features shall not allow the inverters to be operated in a manner which may be unsafe or damaging.
- Inverters shall be true sine wave high frequency PWM with galvanic isolation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Inverters shall be capable of adjusting to "sun splash" from all possible combinations of cloud fringe effects without interruption of electrical production.
- Isolation transformers shall be provided.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall have a THD < 5%.
- Enclosures shall be rated NEMA 3R within an appropriate shelter.
- Power factor shall be 0.99 or higher.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with City activities.
- Inverters shall have a minimum efficiency, based on the device’s power rating, meeting the following specifications:

Inverter Efficiency Requirements

Inverter Power Rating Range	Minimum Efficiency
1000+ kW	96%
500-999 kW	97%
250-499 kW	96.8%
100-249 kW	95.8%
50-99 kW	94.5%
0-49 kW	93.5%

5.5.5 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking, with reliable components, proven in similar projects, and shall be designed to resist dead load, live load, corrosion UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. The Design-Builder’s design shall sufficiently respond to the design requirements imposed by Federal, State, and local jurisdictions in effect at the time of Agreement execution and any pending code decisions affecting the design shall be identified during Schematic Design. Design-Builder shall conduct an analysis, and submit

evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- Final coating and paint colors shall be reviewed and approved by the City during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

5.5.6 Corrosion Control

- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.
- Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- A Corrosion control plan must be submitted by Design-Builder during the Design Review process for City approval which will include at a minimum the analysis of the corrosion risk and mitigation measures.

5.5.7 Roofing requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. A minimum of four feet of clearance shall be provided between PV equipment and the edge of the roof. Clearance guidelines of the local fire marshal shall be followed. The installation of solar systems must comply with the State Fire Marshal Solar Photovoltaic Installation Guideline. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment.

Proposed roof top mounted systems may be standing seam attachment or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Design-Builder prior to design approval.
- All racking systems shall allow for the City staff to perform roof inspection, cleaning, and maintenance operations with minimal obstructions from the racking; maintenance activities include, but are not limited to, leak identification, or repair once the solar system is installed.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Design-Builder shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted.
- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
- All materials and/or sealants must be chemically compatible.
- Thermal movement that causes scuffing to the roof must be mitigated as part of the mounting solution.
- All penetrations shall be waterproofed.
- Detail(s) for the sealing of any roof penetrations shall be approved in writing to the City, as well as the manufacturer of the existing roofing system, as part of system design review and approval – prior to Design-Builder proceeding with work. The City will make available the roofing manufacturer for each building for consultation with Design-Builder as part of the design process.

- All roofing work shall be performed by a licensed roofing contractor who is certified by the roofing materials manufacturer for the specific materials or systems comprising each roof upon which a solar system will be installed. The roofing contractor shall also be safety prequalified by the City.
- As part of the design submittals, Design-Builder shall include signed certificates from the roofing manufacturer stating:
 - The roofing contractor is certified installer of Complete Roofing System.
 - The manufacturer's Technical Representative is qualified and authorized to approve project.
 - Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
 - Existing warranty incorporates the new roofing work and flashing work.
- Any damage to roofing material during installation of solar systems must be remedied by Design-Builder.
- The installation of PV modules, inverters and other equipment on building roofs will be designed to minimize visibility of the equipment from the ground.

5.5.8 Ancillary Equipment and Infrastructure for Ground Mount Systems

Design-Builder will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing for ground mount solar systems: the site shall be surrounded by a fence to prevent students and vandals from gaining access the site. The fence shall be a ten (10) foot high chain link fence with a one (1) foot high top guard with three strands of nine-gage barbed wire. All new fences installed as part of this project shall be finished to match existing fencing at the site.
- At least two gates shall be installed to enable site access for trucks.
- Access to water (from the main site) for maintenance (module cleaning) purposes, as determined adequate by Design-Builder.
- Access to low voltage (120V) AC power (from the main site) to power maintenance equipment and miscellaneous equipment.
- Design-Builder shall install and ensure activation of security cameras on site, connected to the site's security system, in collaboration with the City (ground mount only).
- Design-Builder will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management (ground mount only).
- Design-Builder will be responsible for creating an access road to the any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.
- Design-Builder shall include safety equipment (electrical equipment, signage, etc)

5.5.9 Lightning and Surge Protection

- Design-Builder shall utilize lightning arrestors to protect appropriate equipment from lightning strikes.
- Design-Builder shall utilize surge suppressors to protect the appropriate equipment from electrical surges.

5.5.10 Storm Water Pollution Prevention Plan (SWPPP)

Design-Builder will be responsible for creating and executing a SWPPP that meets the California State regulations. The SWPPP should contain a site map(s) which shows the construction site perimeter, existing and proposed buildings, lots, roadways, storm water collection and discharge points, general topography both before and after construction, and drainage patterns across the project.

5.5.11 Wiring and Cabling Runs

- Design-Builder shall layout and install all AC conductors in conduit.
- Conduit buried underground shall be suitable for the application and compliant with all applicable codes. PVC shall be constructed of a virgin homopolymer PVC compound and be manufactured according to NEMA and UL specifications. All PVC conduit feeders shall contain a copper grounding conductor sized

per NEC requirements and continuity shall be maintained throughout conduit runs and pullboxes. A tracing/caution tape must be installed in the trench over all buried conduit. Minimum size shall be ¾". Underground conduit buried under roadways or swales shall be one slack slurry encased.

- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the City as part of Design Review.
- Electro-metallic tubing (EMT) shall be used in indoor, above grade locations and where conduit needs to be protected from damage. EMT shall not be installed underground, outdoors, or embedded in concrete. EMT shall be cold-rolled zinc coated steel and be manufactured to UL and ANSI standards. Fittings shall be watertight and malleable gripping ring compression type. Pressure cast material for nuts of compression ring type fittings and set-screw type connections are not acceptable.
- Galvanized Rigid Conduit (GRC) shall be used where exposed to weather or where subject to physical damage in exposed areas. GRC shall be continuous hot-dipped galvanized manufactured per UL and ANSI requirements. Rigid aluminum conduit is not acceptable. Conduit bodies for use with steel conduit, rigid or flexible, shall be manufactured per UL requirements and shall be cast metal with gasketed closures. Fittings for GRC conduit shall be malleable iron or forged steel with cadmium or zinc coating. Union couplings for joining rigid conduit at intermediate runs shall be of the same material as the conduit. Couplings shall be threaded concrete-tight to permit completing conduit runs when neither conduit can be turned and to permit breaking the conduit run at the union. Set screw connectors are not acceptable.
- Minimum conduit size shall be ¾".
- All conduits, boxes, enclosures, etc. shall be secured per NEC 690 requirements.
- All conductors shall be insulated copper rated for 600V or 1000V, maximum. DC conductors shall be USE-2 600V UL Listed Sunlight resistant wire. Exception are acceptable but must be highlighted in Design Builders proposal.
- All items shall be U.L. listed and shall bear the U.L. label.
- All spare conduits shall be cleaned, mandrelled, and provided with a pullwire. Spare conduits shall be required for security cameras for ground mount systems.
- All feeders and branch circuits shall be sized to minimize voltage drop and losses and shall be in compliance with NEC requirements.
- Design-Builder shall furnish, install, and connect combiners and recombiners as necessary to complete the System. Enclosures for combiners and recombiners shall be NEMA 4 or 4X rated.
- All systems, conduit, boxes, components, etc. shall be grounded and bonded per NEC requirements.
- Design-Builder will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure.

5.5.12 Meters

- Design-Builder shall supply and install SCE approved a Net Generation Output Meter (NGOM) for each PV system.
- Generation Meters shall use Internet Protocol (IP) communication and shall not require a custom network for connection.
- Generation Meters shall have the capability to store metered data (including instantaneous kW, kWh, voltage, current, and phase information) in fifteen (15) minute intervals and retain such information for at least seven (7) days.

5.5.13 Shade Structure Lighting

Intentionally Omitted.

5.5.14 Monitoring System, DAS, and Reporting

Design-Builder shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the City to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Design-Builder shall provide equipment to connect

the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The City will pay for the cost of cellular data service if needed, but not for the modem or other equipment need to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- AC and DC voltage
- Horizontal and in-plane irradiance (at least two (2) sensors for each, at different positions in the array)
- Ambient and back-of-cell temperature (at least two (2) sensors for each, at different positions in the array)
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures, wind speed, and irradiance) shall be collected via an individual weather station installed for each system at the City.

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the City for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable City staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document.

Additionally, Design-Builder shall provide the following reports for the life of the Project:

- Monthly Production report shall be available online to the City personnel.
- Annual Performance report shall be sent electronically to the City personnel.
- System performance data shall be made available electronically to the City in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the City to assist the City in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the City in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

5.5.15 Warranties

Design-Builder shall provide a comprehensive one-year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (20) years of operation.
- Inverter: The inverter shall carry an extended warranty of at least twenty (20) years.
- Meters: At minimum, meters shall have a one (1) year warranty.
- Mounting system: twenty (20) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: the remainder of system components shall carry manufacturer warranties conform to industry standards.

All work performed by Design-Builder must not render void, violate, or otherwise jeopardize any preexisting City facility or building warranties or the warranties of system components.

5.5.16 Other Considerations

- All Balance of Systems (wiring, components, conduits, and connections) must be suited for conditions for which they are to be installed.
- Local DC and AC disconnects shall be located in accessible locations near inverters.
- Outdoor enclosures shall be rated NEMA 3R, NEMA 4, or NEMA 4X.

5.5.17 Permits and Approvals

Design-Builder shall produce required documentation in sufficient detail to obtain all regulatory approvals requested for design, construction and operation of the system, including but not limited to all federal, state, and local permits. Securing all approvals, all permits and paying all fees shall be the sole responsibility of Design-Builder. To that end, Respondent shall provide a design that is acceptable to the state, county, and local authorities having jurisdiction over this project. The proposed design shall be suitable for construction under the guidelines and regulations in effect at the time the Agreement is executed. The City will not accept responsibility for cost increases or delays resulting from inaccurate interpretation of existing codes and standards.

5.5.18 Interconnection

Design-Builder is responsible for obtaining all necessary SCE interconnection approvals for each PV system being installed. Design-Builder must comply with all interconnection requirements, such as CPUC Rule 21 for the SCE service territory. Design-Builder is responsible for the proper planning and scheduling of interconnection approvals and any potential interconnection study. Systems installed as part of this project will take advantage of Net Energy Metering (NEM). Design-Builder shall be responsible for ensuring the system design and interconnection qualifies for NEM.

5.5.19 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the Sacramento Executive Airport. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The City will independently verify production models and utilize simulation results for economic evaluations. Design-Builder shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

5.5.20 Shading

Design-Builder shall adhere to the following requirements in order to avoid excessive shading on modules. For any object near an array that is higher than the lowest point of that array by height H, Design-Builder shall locate the array farther from the object than:

- 3H to the North of the object
- 3H to the East or West of the object
- 3H to any non-cardinal direction of the object

Any Respondent whose system design does not adhere to these rules shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an

adverse performance and/or economic impact.

Any trees that are in the footprint of systems to be installed by the Design-Builder shall be removed by the Design-Builder at their expense, subject to the approval of the City. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The City will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Design-Builder identifies these trees during the design process.

6.0 PROCUREMENT/CONSTRUCTION

6.1. Scope of Supply

Design-Builder shall provide all necessary labor, materials, equipment, and services required to install complete integrated turnkey PV systems. Design-Builder shall supply all solar modules, mounting equipment, inverters, AC and DC disconnect switches, metering, related wiring, monitoring equipment, and all ancillary equipment necessary to install the PV system and interconnect it to the City electrical distribution system. The PV system installations shall comply with all contract requirements, technical specifications, approved design documents, and applicable regulatory codes and requirements. Design-Builder shall submit As-Built Construction Drawings in hard copy with four (4) sets and an electronic copy in DWG format on compact disc to the City after completion of the Proving Period for each system at each site.

6.2. Materials and Equipment

Materials and equipment incorporated in the Work shall be new and suitable for the use intended. No material or equipment shall be used for any purpose other than that for which it is designed, specified or indicated.

Design-Builder shall use means necessary to protect the materials and equipment before, during and after installation. Design-Builder shall promptly replace lost or damaged materials and equipment with equal, or City-approved, replacements, or repair them, at no additional cost to the City.

6.3. Quality Assurance and Quality Control

Design-Builder shall implement a Quality Assurance / Quality Control (QA/QC) plan for construction activities on City sites. At least 30 days prior to the planned commencement of construction, Design-Builder shall submit a copy of the QA/QC Plan for review and approval by the City.

To ensure the highest quality of the installation, Design-Builder shall:

- Implement policies and procedures to ensure proper oversight of construction work, verification of adherence to construction documents and contractual requirements, and rapid identification and mitigation of issues and risks.
- Utilize best practice methods for communicating progress, performing work according to the approved Project schedule, and completing the Project on-time.
- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Provide equipment marking, as well as labeling and signage for the Project that shall be removed after Project completion.
- Fully comply with all applicable notification, safety and Work rules (including City safety standards) when working on or near City facilities.
- Route all electrical collection system wiring and conduits in a neat and orderly fashion and in accordance with all applicable code requirements. All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the

Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads.

7.0 TESTING

Following completion of construction, Design-Builder shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be submitted and approved by the City prior to substantial completion of construction. A detailed description of each phase is provided below.

7.1. Acceptance Testing

Design-Builder shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed test methods, including sample calculations and reference to standards as required or applicable, and list of tested equipment.
- Pre-test checklist to ensure readiness and any safety measures are in-place.
- Details of all necessary adjustments, balancing, required equipment isolation or configuration, test equipment and instruments, calibration, and personnel needed.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level testing for all PV strings.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Design-Builder conducts all Acceptance Testing based on the Testing Plan approved by the City prior to substantial completion, Design-Builder shall submit a detailed Acceptance Test Report to the City for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

7.2. System Startup

Following City approval of the Acceptance Test Report, Design-Builder shall conduct tests over twenty-four (24) hours and at a time resolution of fifteen (15) minutes, recording the following data:

- Average AC output (kW)
- Average DC output (kW)
- Hourly PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information

These data points shall be presented in a manner that best depicts the actual performance of the system for City review and approval and shall be submitted as part of the Startup Test Report.

7.3. Proving Period (30 days)

Upon completion of Acceptance Testing and System Startup, and approval by the City, Design-Builder shall monitor the system during a thirty (30) day Proving Period prior to final acceptance by the City. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Design-Builder shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the City for access throughout the Proving Period. Design-Builder shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

All data and reports required in Section 2.4.5.14 shall be fully functional and available to the City at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period and deficiencies in these areas (including missing data, inaccurate reports, and other issues that make validation of system performance inconclusive) shall be grounds for denying approval of the Proving Period Report.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Design-Builder, deficiencies shall be identified with proposed corrective actions submitted to the City, and the Proving Period test repeated. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase. The Project will not be approved for final payment until the Proving Period output matches or exceeds proposed performance.

8.0 OPERATIONS AND MAINTENANCE

Intentionally Omitted. See Separate Operations and Maintenance Agreement.

9.0 PRODUCTION GUARANTEE

Intentionally Omitted. See separate Performance Guarantee Agreement ("PeGu").

10.0 TRAINING

Seller will provide a one-time training to facilities personnel of the Purchaser regarding the operations of the system once the systems are operational. As Seller will be the system owner, Seller will take care of all the O&M of the system, allowing the Purchaser to enjoy the benefits of clean energy. Seller maintains and keeps all equipment warranty, thus it is only qualified and factory/manufacturer-trained personnel who will be able to repair systems so as not to void warranties. The only training Seller can provide to facilities personnel is PV system safety, emergency shutdown procedures, and monitoring system use. Seller will provide the Purchaser with a copy of the Operations and Maintenance manual.

ATTACHMENT 8

SolarCity

Performance Guarantee Agreement

(Power Purchase Agreement – Palm Springs Convention Center)

This Performance Guarantee Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Attention: David Ready, City Manager	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(760) 323-8204	Phone	(650) 638-1028
Fax	(760) 323-8332	Fax	(650) 560-6460
E-mail	David.Ready@palmsprings-ca.gov	E-mail	contracts@solarcity.com
Project Name	Convention Center		

This Agreement sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Power Purchase Agreement by and between Seller and Purchaser dated the same date as this Agreement (the “**PPA**”). All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Agreement shall be concurrent with the term of the PPA. This Agreement will be updated as necessary by mutual written agreement of the Parties to reflect the as-built specifications of the System.

1. **Warranty.** Seller guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) (“**Guaranteed kWh**”) of energy set forth as follows:

A. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the Actual kWh is *greater* than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. “**Guaranteed kWh**”:

True Up Term Years	Guaranteed kWh
Years 1-5	6,479,886
Years 6-10	6,319,501
Years 11-15	6,163,086
Years 16 -20	6,010,541

D. “**Actual kWh**” means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive sixty (60) month anniversary of the Commercial Operation Date. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	Guaranteed Energy Price per kWh
Years 1-5	\$0.050
Years 6-10	\$0.060
Years 11-15	\$0.070
Years 16 - 20	\$0.080

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

- A. someone other than Seller or its approved service providers installed, removed, re-installed or repaired the System;
- B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);
- C. Purchaser's failure to perform, or breach of, Purchaser's obligations under the PPA (such as if Purchaser modifies or alters the System);
- D. Purchaser's breach of this Agreement including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- E. any Force Majeure Event (as defined below);
- F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;
- G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

- A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
- B. Seller's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
- C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by Seller's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather

condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by Seller or under its control.

4. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law, Arbitration.**

A. General. The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration, provided that the following dispute resolution steps shall first be exhausted:

B. Meet and Confer. An officer of each Party shall conduct a meet and confer conference to mutually resolve any conflict or alleged default. The meet and confer conference may be called by either Party and shall be held within 10 days from the date that a request for the conference is made. If the meet and confer conference does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the non-binding mediation process set forth below.

C. Non-Binding Mediation. The Parties shall mutually call for a non-binding mediation process to be conducted under the auspices of the judicial mediation services of "JAMS" in its Riverside County Offices. The Parties shall arrange to have the mediation conducted within 60 days from date of the call for mediation. If the non-binding mediation process does not resolve the dispute to the mutual satisfaction of the Parties, then resort shall be made to the binding arbitration process set forth below.

D. Binding Arbitration. Each arbitration, including the selecting of the arbitrator, will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures. If JAMS is unavailable, the AAA will be the administering body. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either Party can initiate a binding arbitration proceeding by filing the necessary forms with JAMS after first utilizing the meet and confer process and non-binding mediation process described above. Venue for any arbitration brought under this Agreement shall be proper in Riverside California. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement. In the event of any arbitration arising from or related to this Agreement, the prevailing Party will be entitled to recovery of all reasonable costs incurred, including court costs, attorneys' fees, experts' fees and other related expenses.

6. **Assignment and Transfer of this Agreement.** Seller may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of Seller's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

7. **Entire Agreement, Changes.** This Agreement contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Agreement shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of Seller's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into the Agreement on this ___ day of _____, 2016

“PURCHASER”

ATTEST:

CITY OF PALM SPRINGS, a California charter city and municipal corporation

By: _____
James Thompson
City Clerk

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

“SELLER”

SOLARCITY CORPORATION, a Delaware corporation

Corporations require two notarized signatures: One signature must be from the Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT 9

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: Riverside
P.O. Box 751
Riverside, CA 92502-0751

From: (Public Agency): City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

(Address)

Project Title: Animal Shelter Solar PV System, City Project No. 15-03

Project Applicant: City of Palm Springs

Project Location - Specific:

APN 680-020-010

Project Location - City: Palm Springs Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

The project includes the construction of a 430 kW ground-mounted solar array on 1.5-acres of vacant land located adjacent to the City of Palm Springs Animal Shelter and the Wastewater Treatment Plant, including solar PV modules, electrical equipment, conduits, electrical wiring, and associated improvements.

Name of Public Agency Approving Project: City of Palm Springs

Name of Person or Agency Carrying Out Project: City of Palm Springs

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: 15332, Class 32 - In Fill Development
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project will be installed on 1.5 acres of vacant land surrounded by urban uses, consistent with applicable general plan and zoning regulations, on a site that has no value as habitat for endangered, rare, or threatened species, and will not result in any significant effects relating to traffic, noise, air quality or water quality.

Lead Agency
Contact Person: Marcus L. Fuller Area Code/Telephone/Extension: (760) 323-8253

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: 05/06/2016 Title: City Engineer

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ATTACHMENT 10

Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: Riverside
P.O. Box 751
Riverside, CA 92502-0751

From: (Public Agency): City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

(Address)

Project Title: Convention Center Solar PV System, City Project No. 15-03

Project Applicant: City of Palm Springs

Project Location - Specific:

City of Palm Springs Convention Center, APN 508-056-018

Project Location - City: Palm Springs Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

The project includes the construction of a total of 848 kW roof-mounted solar arrays on the roof of the Palm Springs Convention Center, including solar PV modules, electrical equipment, conduits, electrical wiring, and associated improvements.

Name of Public Agency Approving Project: City of Palm Springs

Name of Person or Agency Carrying Out Project: City of Palm Springs

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: 21080.35

Reasons why project is exempt:

The project will be installed on the roof of an existing building, and pursuant to Public Resources Code 21080.35, it considered categorically exempt from CEQA.

Lead Agency
Contact Person: Marcus L. Fuller Area Code/Telephone/Extension: (760) 323-8253

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: 05/06/2016 Title: City Engineer

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ATTACHMENT 11

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, MAKING FINDINGS AND AUTHORIZING THE CITY MANAGER TO ENTER INTO CERTAIN INFRASTRUCTURE FINANCING AGREEMENTS AND ASSOCIATED CONTRACTS WITH SOLARCITY CORPORATION PURSUANT TO GOVERNMENT CODE 5956, ET SEQ., FOR THE COMPLETE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF SOLAR PHOTOVOLTAIC SYSTEMS AT THE PALM SPRINGS ANIMAL SHELTER AND AT THE PALM SPRINGS CONVENTION CENTER, AND APPROVING AND ORDERING THE FILING OF A CEQA NOTICE OF EXEMPTION.

WHEREAS, Chapter 1040 of the 1996 Statutes and Amendments to the Codes, approved September 28, 1996, as Chapter 14, "Infrastructure Financing," commencing with Section 5956, added to Division 6 of Title 1 of the California Government Code, (hereinafter the "Code"), with the specific legislative intention that local governmental agencies have the authority and flexibility to utilize private investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities; and

WHEREAS, pursuant to Section 5956.4 of the Code provides that a governmental agency may solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and may lease to, private entities various types of fee-producing infrastructure projects, including energy or power production; and

WHEREAS, pursuant to Section 5956.5 of the Code provides that a governmental agency soliciting proposals and entering into agreements with private entities for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, by private entities for fee-producing infrastructure projects shall ensure that the contractor is selected pursuant to a competitive negotiation process; and

WHEREAS, Section 5956.5 of the Code further states that fee-producing infrastructure projects may be proposed by the private entity and selected by the governmental agency at the discretion of the governmental agency, and may be proposed and selected individually or as part of a related or larger project with a competitive negotiation process utilizing, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility at fair and reasonable prices to the user of the infrastructure facility services, and shall not require competitive bidding; and

WHEREAS, Section 5956.5 of the Code further states that the governmental agency soliciting proposals for fee-producing infrastructure projects is not subject to any other provisions of the California Public Contract Code or the California Government Code that relates to public procurements; and

WHEREAS, on January 21, 2015, the City Council of the City of Palm Springs, California, (hereinafter the "City Council"), approved Request for Proposals No. 03-15, "Design-Build of Solar Electric Systems," (hereinafter the "RFP") to award contracts (either Design-Build contracts or Power Purchase Agreements, at the sole discretion of and determination by the City), to selected qualified firms for Design and Construction of certain "Energy Conservation Measures" in the form of solar panels, monitoring systems, and tracking devices ("Solar PV Systems") requiring engineering, design, procurement, construction management, installation, construction, training, monitoring, verification, maintenance, operation, and repair services ("Services") for Solar PV Systems at fourteen potential City facilities; and

WHEREAS, in accordance with the legislative authority granted to the City pursuant to Section 5956.5 of the Code the RFP was not conducted as formal competitive bid process, but as a formal qualifications based selection which identified specific evaluation criteria for the selection of qualified firms, including: firm and staff qualifications, understanding of the scope of work, schedule of performance, proposed system aesthetics, local expertise, and total project cost; and

WHEREAS, on March 19, 2015, the City received formal proposals from ten various firms to provide Services related to the Solar PV Systems by the deadline for submittal of proposals specified by the RFP; and

WHEREAS, the City Council previously engaged the professional engineering firm of Newcomb|Anderson|McCormick (hereinafter "NAM") to perform photovoltaic feasibility analysis related to potential development of Solar PV Systems at the various City facilities, including development of the evaluation criteria specified in the RFP for selection of a firm or firms to be awarded Design-Build contracts or Power Purchase Agreements for Services required for the Solar PV Systems; and

WHEREAS, an Evaluation Committee including representatives from NAM and City staff thoroughly reviewed the proposals submitted in response to the RFP on the basis of the evaluation criteria stated therein, and recommended to the City Council a final selection of two of the ten firms; and

WHEREAS, on September 2, 2015, the City Council received a presentation on the final selection of firms to provide Services associated with development of Solar PV Systems at various City facilities, and authorized staff to proceed with final negotiations of Design-Build contracts or Power Purchase Agreements with SolarCity Corporation for specified City facilities; and

WHEREAS, final negotiations with SolarCity Corporation have concluded, and as set forth in the final and best offer included with the proposal submitted by SolarCity Corporation, SolarCity Corporation has committed to perform the required Services for Solar PV Systems at the City's Animal Shelter (hereinafter the "Animal Shelter Solar PV System"), and at the City's Convention Center (hereinafter the "Convention Center Solar PV System"); and

WHEREAS, a Design-Build contract with SolarCity Corporation in the amount of \$1,118,523.97 to construct a 400.52 kW Solar PV System producing 722,940 kWh for the Animal Shelter Solar PV System has been negotiated and recommended for City Council approval; and

WHEREAS, a Performance Guarantee Agreement with SolarCity Corporation in the amount of \$56,701.03 guaranteeing the production of electricity produced by the Animal Shelter Solar PV System for a twenty year period has been negotiated and recommended for City Council approval; and

WHEREAS, an Operation and Maintenance Agreement with SolarCity Corporation in the amount of \$5,908.34 (Year 1), escalating to \$10,360.30 (Year 20), for a total cost of \$158,759.22 providing turn-key preventive maintenance of the Animal Shelter Solar PV System for a twenty year period has been negotiated and recommended for City Council approval; and

WHEREAS, a Power Purchase Agreement with SolarCity Corporation to develop, operate, and maintain a 848.16 kW Solar PV System producing 1,309,002 kWh for the Convention Center Solar PV System with the City purchasing electricity at a fixed rate of \$0.078 per kWh for a twenty year period has been negotiated and recommended for City Council approval; and

WHEREAS, a Performance Guarantee Agreement with SolarCity Corporation in the amount of \$0 (included in the purchase price of electricity via the Power Purchase Agreement) guaranteeing the production of electricity produced by the Convention Center Solar PV System for a twenty year period has been negotiated and recommended for City Council approval; and

WHEREAS, the Animal Shelter Solar PV System will generate an estimated \$2,134,236 in utility bill savings over the twenty year period covered by the agreements approved with SolarCity Corporation; and

WHEREAS, the Convention Center Solar PV System will generate an estimated \$3,083,601 in utility bill savings over the twenty year period covered by the agreements approved with SolarCity Corporation; and

WHEREAS, the Animal Shelter Solar PV System and Convention Center Solar PV System are considered "Projects" as defined by the California Environmental Quality Act ("CEQA"), in that a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the Animal Shelter Solar PV System is proposed to be installed on 1.5 acres of currently vacant land surrounding by urban uses located adjacent to the City's Animal Shelter and Wastewater Treatment Plant, consistent with the applicable general plan designation and all applicable general plan policies, applicable zoning designation and regulations, on a project site that has no value as habitat for endangered, rare, or threatened species, and would not result in any significant effects relating to traffic, noise, air quality or water quality; and

WHEREAS, pursuant to California Public Resources Code 21084, and Section 15332 of the CEQA Guidelines, the Animal Shelter Solar PV System is considered an "In-Fill Development Project," defined as a Class 32 Categorical Exemption, and construction of the Animal Shelter Solar PV System is considered Categorically Exempt from CEQA; and

WHEREAS, Senate Bill 226, effective January 1, 2012, enacted California Public Resources Code 21080.35, which created a new Categorical Exemption under CEQA for the installation of solar energy systems, including associated equipment, on the roof of an existing building or at an existing parking lot; and

WHEREAS, the Convention Center Solar PV System is proposed to be installed on the roof of an existing buildings, and pursuant to California Public Resources Code 21080.35, construction of the Convention Center Solar PV System is considered Categorically Exempt from CEQA; and

WHEREAS, on June 23, 2016, the City Council carefully considered all of the evidence associated with the proposed agreements with SolarCity Corporation, including public testimony received, and approved the actions as presented herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS AND RESOLVES AS FOLLOWS:

Section 1. The facts set forth in the Recitals above are true and correct, and are made a part of this Resolution.

Section 2. The Animal Shelter Solar PV System and Convention Center Solar PV System are considered infrastructure projects to be implemented under the legislative authority granted to the City pursuant to Chapter 14, "Infrastructure Financing," commencing with Section 5956, of the California Government Code.

- Section 3.** The Design-Build contract and Power Purchase Agreement, and related Performance Guarantee Agreements, and Operation and Maintenance Agreements, with SolarCity Corporation are considered the types of infrastructure financing agreements to be entered into with private entities pursuant to Section 5956.4 of the California Government Code.
- Section 4.** The Animal Shelter Solar PV System and Convention Center Solar PV System are estimated to save the City \$5,217,837 over the twenty year period covered by the infrastructure financing agreements related to their design, construction, operation, and maintenance, and award of these agreements is being made in the best interest of the City.
- Section 5.** The Design-Build contract with SolarCity Corporation in the amount of \$1,118,523.97 to construct a 400.52 kW Solar PV System producing 722,940 kWh for the Animal Shelter Solar PV System is hereby approved.
- Section 6.** The Performance Guarantee Agreement with SolarCity Corporation in the amount of \$56,701.03 guaranteeing the production of electricity produced by the Animal Shelter Solar PV System for a twenty year period is hereby approved.
- Section 7.** The Operation and Maintenance Agreement with SolarCity Corporation in the amount of \$5,908.34 (Year 1), escalating to \$10,360.30 (Year 20), for a total cost of \$158,759.22, providing turn-key preventive maintenance of the Animal Shelter Solar PV System for a twenty year period is hereby approved.
- Section 8.** The Power Purchase Agreement with SolarCity Corporation to develop, operate, and maintain a 848.16 kW Solar PV System producing 1,309,002 kWh for the Convention Center Solar PV System with the City purchasing electricity at a fixed rate of \$0.078 per kWh for a twenty year period is hereby approved.
- Section 9.** The Performance Guarantee Agreement with SolarCity Corporation in the amount of \$0 (included in the purchase price of electricity via the Power Purchase Agreement) guaranteeing the production of electricity produced by the Convention Center Solar PV System for a twenty year period is hereby approved.
- Section 10.** The design, construction, operation, and maintenance of the Animal Shelter Solar PV System has been reviewed pursuant to the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. The City Council has determined, based upon its independent judgment, that the Animal Shelter Solar PV System is considered categorically exempt from CEQA pursuant to California Public Resources Code 21084, and Section 15332 of the CEQA

Guidelines, as a Class 32 Categorical Exemption, and hereby approves and orders the filing of a CEQA Notice of Exemption.

Section 11. The design, construction, operation, and maintenance of the Convention Center Solar PV System has been reviewed pursuant to the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. The City Council has determined, based upon its independent judgment, that the Convention Center Solar PV System is considered categorically exempt from CEQA pursuant to California Public Resources Code 21080.35, and hereby approves and orders the filing of a CEQA Notice of Exemption.

Section 12. The City Manager is hereby authorized to execute all necessary documents and agreements associated with the Animal Shelter Solar PV System and Convention Center Solar PV System, including amendments thereto as may be necessary to implement the terms and conditions therein.

ADOPTED THIS 23RD DAY OF JUNE, 2016.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on June 23, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California