



City Council Staff Report

Date: November 2, 2016

NEW BUSINESS

Subject: APPROVAL OF AN AMENDMENT TO THE POWER PURCHASE AGREEMENT AND PERFORMANCE GUARANTEE AGREEMENT WITH SOLARCITY CORPORATION FOR SOLAR PHOTOVOLTAIC SYSTEMS AT SUNRISE PARK, CITY PROJECT NO. 15-03

From: David H. Ready, City Manager

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

SUMMARY

On October 7, 2015, the City Council approved a Power Purchase Agreement (or "PPA") and Performance Guarantee Agreement with SolarCity for installation of a roof-mounted 334.8 kW solar photovoltaic ("PV") system on various buildings at Sunrise Park. Pursuant to the PPA, SolarCity would own the solar PV system and the City would purchase electricity generated from it for a fixed price of \$0.075 per kilowatt-hour ("kWh"). Following execution of the PPA, SolarCity completed due diligence of the design of the solar PV systems, and determined that the layout of the originally proposed size would not be possible, and a reduction in size would be necessary. The requested action would approve an amendment to the PPA to reflect a decrease in size of the solar PV system from 334.8 kW to 145.08 kW. Alternatively, the City Council retains the authority to terminate the previously approved PPA and Performance Guarantee Agreement with no liability to SolarCity, and solicit new proposals from solar firms for solar PV systems at Sunrise Park.

RECOMMENDATION:

- 1) Approve Amendment No. 1 to the Solar Power Purchase Agreement (A6773) with SolarCity Corporation for solar PV systems at Sunrise Park to reduce the size of the solar PV system from 334.8 kW to 145.08 kW maintaining a power purchase price of \$0.075 per kWh fixed for the 20 year term;
- 2) Approve Amendment No. 1 to the Performance Guarantee Agreement (A6773) with SolarCity Corporation for solar PV systems at Sunrise Park to decrease the guaranteed total power generated; and
- 3) Authorize the City Manager to execute all necessary documents.

ITEM NO. SA

BACKGROUND:

On October 7, 2015, the City Council approved a Power Purchase Agreement (or "PPA") for the Sunrise Plaza Solar PV System. The PPA included certain terms and conditions, including pricing, for SolarCity to design, install, operate, and maintain the Sunrise Plaza Solar PV System for a 334.8 kW solar PV system capable of initially producing (beginning in Year 1) a total of 518,510 kWh, which offsets 71% of the typical annual electric load at Sunrise Plaza of 731,495 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 \$0.075 per kWh¹. Pursuant to the approved PPA, there are options for the City to purchase the solar PV system at a fixed price of \$614,932 in Year 6, or at a fixed price of \$558,565 in Year 10. A copy of the PPA is included as **Attachment 1**. The conceptual layout for the Sunrise Plaza Solar PV System is roof-mount solar PV modules on the Library, Leisure Center, and Pavilion as shown in Figure 1:



Figure 1

¹ As a comparison, the City currently pays SCE an average rate of \$0.225 per kWh at Sunrise Plaza; the PPA will lock in a rate of \$0.075 per kWh (67% less than we currently pay) fixed for the 20-year term of the PPA.

Associated with the PPA, the City Council approved a Performance Guarantee Agreement guaranteeing the production of electricity produced by the Sunrise Plaza Solar PV System for a 20-year concurrent with the term of the PPA.

Following execution of the PPA, SolarCity commenced due diligence and analysis of the solar PV system design, including a full inspection and evaluation of the structural construction of the various buildings on which roof-mounted solar PV systems were to be installed. On the basis of their full inspections and evaluation, SolarCity determined that the originally proposed solar systems would need to be decreased in size to provide for Building Code compliance on setbacks from solar panel modules to the edge of the roof structures, and to provide required clearances and maintenance access.

After evaluating alternatives, SolarCity proposed a reduced solar PV system size of 145.08 kW, which is approximately 40% of the size of the originally proposed solar PV system size of 334.8 kW. The reduced solar PV system size would be capable of generating 220,317 kWh of electricity in Year 1 which would offset 30% of the typical annual electric load at Sunrise Plaza of 731,495 kWh.

The conceptual layout for the Sunrise Plaza Solar PV System remain roof-mounted solar PV modules on the Library and Pavilion only, (the Leisure Center roof was determined too small to accommodate an efficiently sized roof-mounted solar system) as shown in Figure 2:



Figure 2

SolarCity has agreed to hold its price for electricity generated by the solar PV system and sold to the City at \$0.075 per kWh as originally stipulated in the approved PPA.

A copy of the amendment to the PPA is included as **Attachment 3**.

Based on the reduced size of the solar PV system at 145.08 kW, the approved Performance Guarantee requires amendment to reduce the guaranteed energy production during each 5-year period of the 20-year term of the guarantee, as shown in Table 1:

Table 1

True Up Term Years	Original Guaranteed kWh	Revised Guaranteed kWh	Reduction
Years 1-5	2,566,754	1,090,624	57%
Years 6-10	2,503,224	1,063,630	57%
Years 11-15	2,441,266	1,037,304	57%
Years 16-20	2,380,842	1,011,629	57%

As the age of the solar PV modules increases, it is anticipated and agreed that the energy production will decrease, as noted in Table 2, (these guaranteed energy prices have not changed).

Table 2

True Up Term Years	Guaranteed Energy Price per kWh
Years 1-5	\$0.036
Years 6-10	\$0.054
Years 11-15	\$0.069
Years 16-20	\$0.080

As proposed, if energy production were 5% below the guarantee of 1,090,624 kWh during the first 5-year period, SolarCity would be required to pay the City \$1,963 (calculated as 54,531 kWh x \$0.036 per kWh). The cost of the 20-year Performance Guarantee is \$0, with its cost included in the terms and conditions of the PPA; a copy of the amendment to the Performance Guarantee is included as **Attachment 4**.

Alternatives for City Council Consideration

The City Council has various options available with regard to the proposed item.

Option 1 – approve the amended PPA which accommodates a reduced solar PV system size that would generate an estimated utility cost savings of \$1,305,884 over the 20-year term of PPA.

Option 2 – deny the amended PPA and terminate all actions with regard to proceeding with solar PV systems at Sunrise Park, with no liability to SolarCity.

In the event City Council determines to deny the amended PPA, and direct staff to pursue new proposals from solar firms for solar PV systems at Sunrise Park, it is important to identify and compare the proposals the City did receive in March 2015 through its competitive and open solicitation. At that time, the City received proposals from 7 solar firms, as shown in Table 3.

	SolarCity*	SunEdison	SunPower	Borrego	LaSalle	Nextera	PCI
Utility Expenditures							
<i>Bill No Solar</i>	(\$6,403,365)	(\$6,403,365)	(\$6,403,365)	(\$6,403,365)	(\$6,403,365)	(\$6,403,365)	(\$6,403,365)
<i>Bill with Solar</i>	(\$2,517,933)	(\$1,985,276)	(\$2,256,139)	(\$2,292,148)	(\$2,056,101)	(\$1,945,027)	(\$2,377,812)
Revenue							
<i>Bill Savings</i>	\$3,885,432	\$4,418,089	\$4,147,225	\$4,111,217	\$4,347,263	\$4,458,338	\$4,025,553
Costs							
<i>PPA Costs</i>	(\$916,050)	(\$1,630,844)	(\$1,486,936)	(\$1,851,702)	(\$3,042,487)	(\$2,250,985)	(\$1,840,291)
<i>PM, Contingency</i>	(\$30,092)	(\$50,677)	(\$50,895)	(\$66,430)	(\$82,043)	(\$81,989)	(\$77,497)
Total Costs	(\$946,142)	(\$1,681,520)	(\$1,537,831)	(\$1,918,131)	(\$3,124,531)	(\$2,332,973)	(\$1,917,788)
Net Benefit	\$2,939,290	\$2,736,569	\$2,609,394	\$2,193,086	\$1,222,733	\$2,125,364	\$2,107,765

*No aesthetic concerns - all roof mount

Table 3

SolarCity, SunEdison and SunPower were the solar firms that provided the proposals with the greatest net benefit to the City. Subsequently, SunEdison declared bankruptcy, leaving SunPower as the remaining alternative option at this time. SunPower's original proposal identified a 313.2 kW solar PV system to be constructed on new carport structures at the parking lot near Sunrise Stadium shown in Figure 3 on the next page.

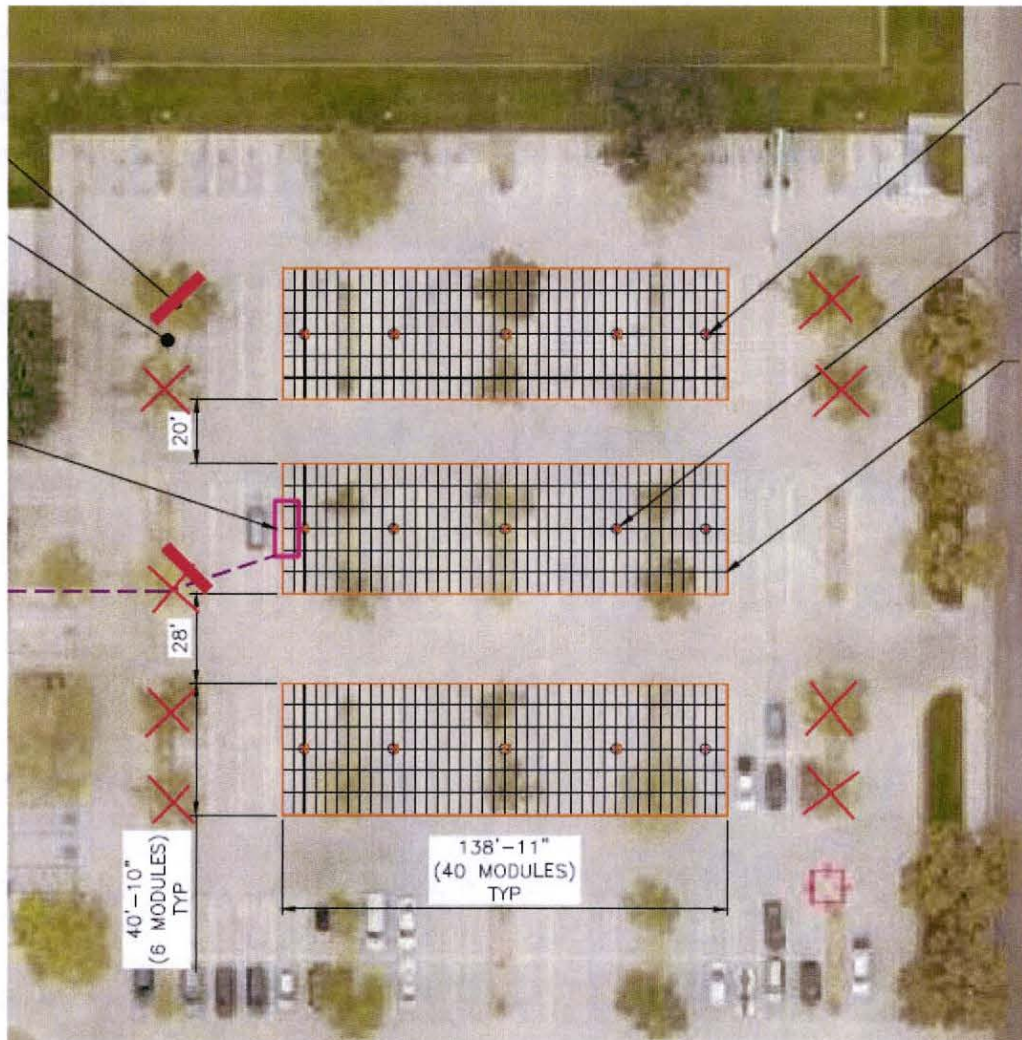


Figure 3

SunPower's proposal did not offer a PPA for this system, and only offered a direct purchase at a cost of \$1,313,895. In its proposal to the City, SunPower indicated that in its experience, maximum financial benefit is obtained when the City owns the systems directly, rather than purchasing power through a leased system owned by SunPower, and was unable to offer financing for the smaller individual solar PV systems. It is unknown if SunPower would be willing to negotiate with the City on a PPA for this site, and if the price would be lower than the price maintained by SolarCity at \$0.075 per kWh.²

² SunPower's original proposal offered pricing via PPA's on 3 larger solar PV systems: the Animal Shelter and Wastewater Treatment Plant with pricing at \$0.0835 per kWh, and the Convention Center at \$0.0973 per kWh – all higher pricing than offered by SolarCity.

ENVIRONMENTAL IMPACT:

Construction of the Sunrise Plaza Solar PV System is considered a "Project" 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.

The Sunrise Plaza Solar PV System is proposed to be installed on the roof of existing buildings located at Sunrise Park, including the Library and Leisure Center. 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 Sunrise Plaza Solar PV System is considered categorically exempt from CEQA, and a Notice of Exemption has been prepared and filed with the Riverside County Clerk.

FISCAL IMPACT:

The City currently incurs an annual cost of \$192,019 for electricity purchased for operation of various City facilities at Sunrise Park (via the Sunrise Plaza electrical plant). This cost is anticipated to escalate to \$369,156 over the next 20 years as a result of continued utility rate increases by SCE, resulting in a total energy cost of \$5,430,231.

If the amended PPA is approved, the revised Sunrise Plaza Solar PV System will construct a 145.08 kW solar PV system capable of initially producing (beginning in Year 1) a total of 220,317 kWh, which offsets 30% of the typical annual electric load at Sunrise Park of 731,495 kWh. The PPA for the Sunrise Plaza 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 \$0.075 per kWh.

The electrical production from the revised Sunrise Plaza Solar PV System will result in an immediate offset (bill savings) of \$59,441 in Year 1, with utility bill savings escalating commensurate with anticipated utility rate increases, to an estimated \$110,346 in Year 20, resulting in a total utility bill savings of \$1,648,185.

As comparison, the originally approved PPA with a larger solar PV system size of 334.8 kW was anticipated to generate total utility bill savings of \$2,846,574.

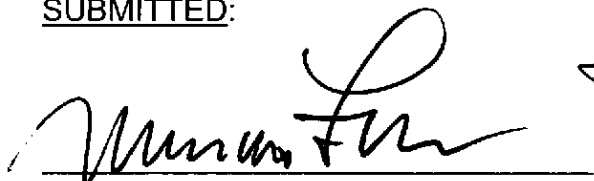
Avoided SCE utility costs occur through the purchase of electricity from SolarCity at the fixed rate of \$0.075 per kWh, which is anticipated to cost \$17,877 in Year 1, and reduces (due to reduced electricity production given degradation of the solar PV modules over time) to an estimated cost of \$16,376 in Year 20, for a total estimated electricity cost of \$342,302.

The net utility cost savings over the 20-year term of the amended PPA is \$1,305,884.

As comparison, the originally approved PPA with a larger solar PV system size of 334.8 kW was anticipated to generate net utility cost savings of \$2,104,668.

Alternatively, the City Council may terminate the PPA at no cost to the City, and not proceed with installation of solar PV systems at Sunrise Park.

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. SolarCity Sunrise Plaza Power Purchase Agreement
2. SolarCity Sunrise Plaza Performance Guarantee
3. Amendment to Power Purchase Agreement
4. Amendment to Performance Guarantee

ATTACHMENT 1

**POWER PURCHASE AGREEMENT
Sunrise Plaza**

This Power Purchase Agreement ("Agreement") is made this 7th day of October, 2015, by and between the City of Palm Springs, a Charter City, ("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 one solar PV generating systems to be located on City property 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.

"**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. Seller shall, at its sole cost and expense, design and construct the System described on Exhibit 2 and as generally shown on Exhibit 3, and perform all of the services identified on Exhibit 6, as may be required to generate electricity for purchase and sell pursuant to this Agreement. 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.

If the Seller fails to meet the conditions in Sections 6(b)(iv), all payments for energy generated by the System during such timeframe prior to Final Acceptance will go to an escrow account (the establishment of which to be agreed upon by both Parties). Once Purchaser issues Final Acceptance, payments accrued in the escrow account will be transferred to Seller.

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 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 refilling the security interests of Seller's Financing Parties in the System. 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 Insolation 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 13.b., 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 7. 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		
	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.

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. failures or delays by the Utility Company or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - v. curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff; or
 - vi. 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

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.

Purchaser City: City of Palm Springs
Signature: [Signature]
Printed Name: MARQUE FULLER
Title: Acting City Manager
Date: 10/28/15

Seller: SOLAR CITY CORPORATION
Signature: [Signature]
Printed Name: LYNDAN RIDE
Title: CEO
Date: 10-15-15

APPROVED AS TO FORM

[Signature]
CITY ATTORNEY

DATE 10-26-2015

[Signature]

SETH WEISSMAN

EVP, GENERAL COUNSEL & SECRETARY

End of Signature Page

10-16-15

APPROVED BY CITY COUNCIL

Res 239105 10.7.14 A6713

ATTEST:

[Signature]
City Clerk

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CONSULTANT: Solar City Corporation

Check one: Individual Partnership 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 Signature of Chairman of Board,
President or any Vice President

By: [Signature]
Notarized Signature Secretary, Asst Secretary,
Treasurer, Asst treasurer or Chief Financial Officer

Name: LYNDON RIVE
Title: CEO

Name: SETH WEISSMAN
Title: EVP, GENERAL COUNSEL & SECRETARY

State of CALIFORNIA
County of SAN MATEO
On OCTOBER 15, 2015 before me, THERESA FACTORA
NOTARY PUBLIC

State of CALIFORNIA
County of SAN MATEO
On OCTOBER 16, 2015 before me, THERESA FACTORA, NOTARY PUBLIC

personally appeared LYNDON RIVE
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.

personally appeared SETH WEISSMAN
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.

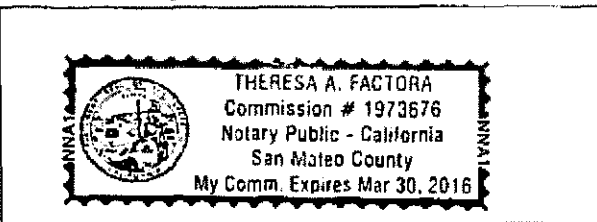
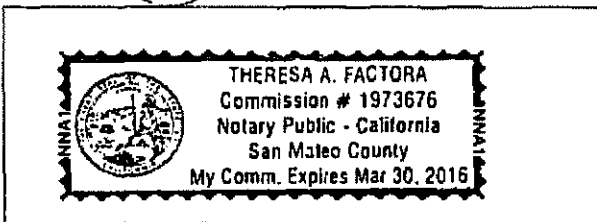
I certify under PENALTY OF PERJURY under the laws of the
State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature: [Signature]
Notary Seal:

Notary Signature: [Signature]
Notary Seal:



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1180

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

EXHIBITS

- 1. Pricing Attachment**
- 2. System Description**
- 3. Engineering Design & Construction Requirements and Service Agreement**
- 4. Form of Memo of License**
- 5. Intentionally Omitted**
- 6. Scope of Work and Requirements**
- 7. 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	\$0.0750
2	\$0.0750
3	\$0.0750
4	\$0.0750
5	\$0.0750
6	\$0.0750
7	\$0.0750
8	\$0.0750
9	\$0.0750
10	\$0.0750
11	\$0.0750
12	\$0.0750
13	\$0.0750
14	\$0.0750
15	\$0.0750
16	\$0.0750
17	\$0.0750
18	\$0.0750
19	\$0.0750
20	\$0.0750

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	\$614,932
10	\$558,565
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	\$1,216,293
2	\$1,058,090
3	\$848,379
4	\$683,391
5	\$544,961
6	\$403,820
7	\$363,129
8	\$343,543
9	\$323,166
10	\$301,957
11	\$279,876
12	\$256,875
13	\$232,910
14	\$207,931
15	\$181,886
16	\$154,721
17	\$126,379
18	\$96,800
19	\$65,922
20	\$33,678

End of Exhibit 1

Exhibit 2

System Description and Delivery Point

1. **System Location:** 405 S. Pavilion Way, Palm Springs, CA 92262
2. **System Size (DC kW):** 334.8 kW
3. **Expected First Year Energy Production:** 518,510 kWh
4. **Expected Module(s):** Trina Solar TSM-310PD14
5. **Expected Inverter(s):** Fronius Symo 24.0-3(480)
6. **Expected Structure:** Zep Solar ZSPeak Non-Penetrating
7. **Includes:** Construction, & Maintenance Service Agreement
8. **Excludes:** Prevailing wage, 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)
3200 E Tahquitz Canyon Way)
Palm Springs, CA 92262)

(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 28th day of October, 2015, (the "Effective Date") by and between the City of Palm Springs ("Licensor"), and SolarCity Corporation ("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 October 28, 2015 ~~2014~~, 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.

Signature page to follow

LICENSOR
Client

By: Marius Fuller
Name: Marius Fuller *aka*
Title: Acting City Manager

LICENSEE
SolarCity Corporation

By: [Signature]
Name: LYNDON RIVE
Title: CEO

[NOTARY ACKNOWLEDGEMENT PAGE FOLLOWS]

APPROVED BY CITY COUNCIL

Res 23905 10.7.15 A6773

ATTEST:

[Signature]
City Clerk

ACKNOWLEDGMENT OF INSTRUMENT
(Cal. Civil Code Section 1181)

State of California)
County of Riverside) ss.
City of Palm Springs)

On October 28, 2015, before me, JAMES THOMPSON, CITY CLERK, CITY OF PALM SPRINGS CALIFORNIA, personally appeared MARCUS L. FULLER, who I personally know is the ACTING CITY MANAGER of the CITY OF PALM SPRINGS whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his official and authorized capacity on behalf of the City of Palm Springs, a California Charter City.

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 the official seal of the City of Palm Springs, California, this 28th day of October, 2015.

Signature:



JAMES THOMPSON, CITY CLERK
City of Palm Springs, California



Title or Type of Document:
SOLARCITY CORPORATION – A6773
Memorandum of License

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

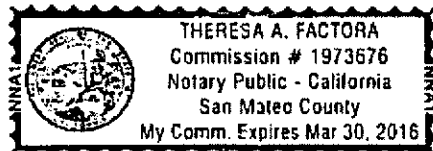
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On OCTOBER 21, 2015, before me, THERESA FACTORA, Notary Public, personally appeared LYNDON RIVE, 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.

Theresa A. Factora

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:

401 S Pavillion Way, Palm Springs, CA 92262

APN: 502-200-002

1901 E Baristo Road, Palm Springs, CA 92262

APN: 502-200-001

End of Exhibit 4

Exhibit 5

INTENTIONALLY OMITTED

End of Exhibit 5

EXHIBIT 6

SCOPE OF WORK AND REQUIREMENTS

[Follows this page]

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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 – Sunrise Plaza PPA Project

- Contract Award: October 7, 2015
- Contract Execution: October 13, 2015
- Notice to Proceed: October 20, 2015
- Site Audit: October 27-30, 2015
- System Design and Permit Start: November 2, 2015
- Permit in Hand: January 22, 2016
- Materials Procurement: February 5, 2016
- Site Preparation: February 8, 2016
- Construction Start: February 16, 2016
- Construction Complete: March 25, 2016
- Utility Permission To Operate: May 6, 2016
- Testing Period: June 5, 2016
- Final Completion: June 5, 2016
- CSI Deadline (with extension): November 4, 2016

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	Submital 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 Incentives, 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

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/maker-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.

Exhibit 7

Certificate in Compliance with Labor Code Section 1861

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 contract.

Seller: _____
Signature: _____
Printed Name: _____
Title: _____
Date: _____

End of Exhibit 7

ATTACHMENT 2



Performance Guarantee Agreement (PPA)

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	Sunrise Plaza		

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	2,566,754
Years 6-10	2,503,224
Years 11-15	2,441,266
Years 16-20	2,380,842

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	\$0.036
Years 6-10	\$0.054
Years 11-15	\$0.069
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. 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 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;

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.

[Signature Page to Follow]

City of Palm Springs

Signature: Marcus Fuller

Printed Name: Marcus Fuller

Title: Acting City Manager

Date: 10/28/15

SolarCity Corporation

Signature: [Signature]

Printed Name: LYNDON RIVE

Title: CEO

Date: 10-15-15

APPROVED AS TO FORM

[Signature]
CITY ATTORNEY

DATE 10.26.2015

[Signature]

SETH WEISSMAN

EVP, GENERAL COUNSEL, SECRETARY

10-16-15

APPROVED BY CITY COUNCIL

106 23905 10715 AB773

ATTEST:

[Signature]
City Clerk

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CONSULTANT: Solar City Corporation

Check one: Individual Partnership 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 Signature of Chairman of Board,
President or any Vice President

By: [Signature]
Notarized Signature Secretary, Asst Secretary,
Treasurer, Asst treasurer or Chief Financial Officer

Name: LYNDON RVE
Title: CEO

Name: SETH WEISSMAN
Title: V.P. GENERAL COUNSEL & SECRETARY

State of CALIFORNIA
County of SAN MATEO
On OCTOBER before me, THERESA FACTORA,
15, 2015 NOTARY PUBLIC
personally appeared LYNDON RVE
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.

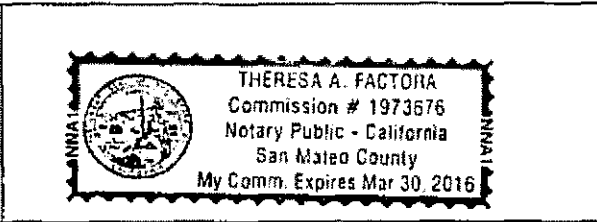
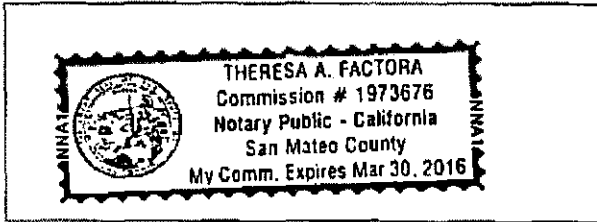
State of CALIFORNIA
County of SAN MATEO
On OCTOBER before me, THERESA FACTORA, NOTARY PUBLIC
16, 2015
personally appeared SETH WEISSMAN
who proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they
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.

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.
Notary Signature: [Signature]
Notary Seal:

WITNESS my hand and official seal.
Notary Signature: [Signature]
Notary Seal:



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document _____

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

ATTACHMENT 3



**Amendment to
Solar Power Purchase Agreement**

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) 638-1948
E-mail	citymanager@palmsprings-ca.gov	E-mail	Contracts@solarcity.com
Project Name	Sunrise Plaza		

The Solar Power Purchase Agreement dated October 28, 2015 (the "Agreement") between SolarCity Corporation (the "Seller") and City of Palm Springs (the "Purchaser") for Sunrise Plaza is hereby amended, effective when executed by the Parties below, as follows:

1. **Exhibit 1, Pricing Attachment** is replaced in its entirety with the attached **Exhibit 1, Pricing Attachment**.
2. **Exhibit 2, System Description, Delivery Point and Premises** is replaced in its entirety with the attached **Exhibit 2, System Description, Delivery Point and Premises**.
3. **Exhibit 3, Project Layout** is replaced in its entirety with the attached **Exhibit 3, Project Layout**.

If a conflict or inconsistency arises between the provisions of this Amendment and the Agreement the provisions of this Amendment shall prevail.

Signature page to follow

City of Palm Springs

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SolarCity Corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SolarCity Corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

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	\$0.0750
2	\$0.0750
3	\$0.0750
4	\$0.0750
5	\$0.0750
6	\$0.0750
7	\$0.0750
8	\$0.0750
9	\$0.0750
10	\$0.0750
11	\$0.0750
12	\$0.0750
13	\$0.0750
14	\$0.0750
15	\$0.0750
16	\$0.0750
17	\$0.0750
18	\$0.0750
19	\$0.0750
20	\$0.0750

5. **Condition Satisfaction Date:** (Conditions defined in Agreement Section 6)
6. **Anticipated Commercial Operation Date:** 450 days after the Effective Date.
7. **Outside Commercial Operation Date:** 06/30/2017
8. **Purchase Option**

YEAR	PURCHASE PRICE
6	\$263,221
10	\$239,476
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	\$523,095
2	\$454,673
3	\$363,936
4	\$292,584
5	\$232,746
6	\$171,739
7	\$154,267
8	\$145,946
9	\$137,289
10	\$128,279
11	\$118,898
12	\$109,127
13	\$98,946
14	\$88,335
15	\$77,270
16	\$65,729
17	\$53,689
18	\$41,123
19	\$28,005
20	\$14,307

End of Exhibit 1

Exhibit 2

System Description and Delivery Point

1. **System Location:** 405 S. Pavilion Way, Palm Springs, CA 92262
2. **System Size (DC kW):** 145.080 kW
3. **Expected First Year Energy Production:** 220,317 kWh
4. **Expected Module(s):** 468 TRINA SOLAR # TSM – 310PD14.18
5. **Expected Inverter(s):** 11 FRONIUS # Symo 12.0-3
6. **Expected Structure:** Zep Solar ZSPeak Non-Penetrating
7. **Includes:** Prevailing wage, construction, & Maintenance Service Agreement
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



ATTACHMENT 4



Amendment to the Performance Guarantee Agreement

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) 638-1948
E-mail	citymanager@palmsprings-ca.gov	E-mail	Contracts@solarcity.com
Project Name	Sunrise Plaza		

The Performance Guarantee Agreement dated October 16, 2015 (the "Agreement") between SolarCity Corporation (the "Seller") and City of Palm Springs (the "Purchaser") for Sunrise Plaza is hereby amended, effective when executed by the Parties below, as follows:

Section 1, C is replaced with the following,

C. **"Guaranteed kWh"**:

True Up Term Years	Guaranteed kWh
Years 1-5	1,090,624
Years 6-10	1,063,630
Years 11-15	1,037,304
Years 16-20	1,011,629

If a conflict or inconsistency arises between the provisions of this Amendment and the Agreement the provisions of this Amendment shall prevail.

City of Palm Springs

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____