

CITY OF SUNNYVALE

CONTRACT TITLE: POWER PURCHASE AGREEMENT

CONTRACT NUMBER:

AWARD DATE:

CONTRACT PERIOD: 25Years from the Actual Commercial Operation Date

SERVICE: Electricity Service Provision

BUYER CONTACT: CITY OF SUNNYVALE

TITLE: Director of Environmental Services Department

BUYER TEL: 408-730-7785

BUYER EMAIL: rchinnakotla@sunnyvale.ca.gov

SELLER NAME: Borrego Solar Systems, Inc.

SELLER CONTACT: Chris Fennimore

TITLE: Project Developer

TEL: 415-991-9242

EMAIL: cfennimore@borregosolar.com

PURPOSE: To establish a service contract for delivery of electricity.

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This Regional Power Purchase Agreement is dated as of _____ ("Effective Date"), and is witnessed, acknowledged, and executed by authorized representatives of BORREGO SOLAR SYSTEMS, INC. 1814 Franklin Street, Floor 7, Oakland, CA 94612, a California corporation limited liability company ("Seller") and the City of Sunnyvale, a Municipal Corporation of the State of California ("Buyer"), as evidenced by their signature on the last page of this document

RECITALS

- A. Buyer wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Buyer has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation led by the County of Alameda;
- C. 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;
- D. Buyer has selected Seller to design, construct, own and operate solar PV generating systems to be located on its property subject to the terms, conditions, covenants and provisions set forth herein (each, a "Facility" and collectively the "Generating Facilities");
- E. Seller intends to construct, own, and operate renewable energy-powered Generating Facilities that shall qualify as an eligible renewable energy resource ("ERR") under the State of California Renewable Portfolio Standard ("RPS") and desires to sell electricity produced by such generating facility together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;
- F. Buyer desires to purchase electricity generated by Seller's Generating Facilities, together with all Environmental Attributes pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: DEFINITIONS

References in this Agreement to the terms or phrases below 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 this Agreement, the more specific provision shall control.

- 1.1 "Actual Commercial Operation" means the date on which a Facility: (i) has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the specifications set forth in Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications), Exhibit 1 (License Agreement) and Exhibit 11 (Detailed Scope of Work) of this Agreement; (ii) Seller has successfully completed the Commissioning Tests, (iii) PG&E has approved installation and given its "Permission to Operate" notification, (iv) the Data Acquisition System has been commissioned and is transmitting data, and, (v) the Facility is capable of generating electricity for sale to the Buyer at the Project Site.
- 1.2 "Actual Commercial Operation Date" the date upon which Seller has notified Buyer in writing that it has satisfied the requirements of Actual Commercial Operation.
- 1.3 "Actual System Output" means the amount of energy recorded by the Seller's metering equipment for a Facility during the relevant Measurement Period.
- 1.4 "Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by such specified Person.
- 1.5 "Agreement" means this Regional Power Purchase Agreement, effective as of the Effective Date, and entered into by and between Buyer and Seller, and all exhibits, items, and schedules (each an "Exhibit", "Item" or "Schedule", as applicable) attached hereto and incorporated herein.
- 1.6 "Anniversary Date" means the first anniversary of the Actual Commercial Operation Date and that same calendar date for each succeeding Contract Year.
- 1.7 "Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, tariff, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Authority approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- 1.8 "Bankruptcy Event" means with respect to a Party, that either:
 - (a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v) filed a petition seeking to take advantage of any other law relating to

bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (vi) taken any corporate or other action for the purpose of effecting any of the foregoing; or

- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-stayed and in effect for a period of sixty (60) days.

- 1.9 "Business Day" means any day other than a Saturday, Sunday, public holidays recognized by California governmental entities or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.
- 1.10 "Buyer Act" means (i) an act of Buyer to repair the Project Site or the Project Site roof (as the case may be) for any reason not directly related to damage caused by the Facility, and such repair requires the partial or complete temporary disassembly or movement of the Facility, or (ii) any act or omission of Buyer or Buyer's employees, Affiliates, agents, or subcontractors that results in a disruption or outage in Facility production.
- 1.11 "Buyout Date" has the meaning assigned to it in Section 2.2.
- 1.12 "Buyout Payment" has the meaning set forth in Section 2.2
- 1.13 "Buyer Address for Payments" means the address to which invoices to the Buyer should be sent, currently:

Office of the Purchasing Division, Sunnyvale City Hall Annex
650 West Olive Avenue, Sunnyvale, CA 94086

- 1.14 "Buyer Address for Notices" means the addresses to which notices to the Buyer should be sent as set forth in Exhibit 3 of this Agreement.
- 1.15 "Buyer Default" - has the meaning set forth in Section 10.3.
- 1.16 "California Renewables Portfolio Standard" means the California State Public Utilities Commission program that requires investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable energy resources to 33% of total procurement by 2020.
- 1.17 "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the California State Public Utilities Commission and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.

"Commissioning Tests" means the tests set forth in Exhibit 13 [Technical Specifications and

Requirements].

- 1.18 "Commencement of Work Date" means the date on which Seller begins site preparation (including, but not limited to, grading or clearing the site) of the Project Site or the physical construction work at the Project Site of a Facility.
- 1.19 "Commercial Operation Deadline" means that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event or breach of this Agreement by Buyer, or to the extent the CSI construction deadline is extended for a Facility.
- 1.20 "Commercially Available Local Electric Utility Provided Energy" means the current applicable PG&E rate tariff time of use price in cents per kilowatt hour for the Project Site.
- 1.21 "Contract AC Power Rating" means the AC power rating for the Facility in a given Contract Year, as specified in Exhibit 4 to this Agreement.
- 1.22 "Contract Capacity" means the maximum instantaneous output of the Facility in kilowatts AC measured at the Delivery Point.
- 1.23 "Contract Price" means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Delivered Energy, as specified in Article 4 and Exhibit 4 to this Agreement.
- 1.24 "Contract Year" means each year beginning on the Actual Commercial Operation Date and succeeding anniversaries of such Date ("Anniversary Date"), and ending on the date immediately preceding the subsequent Anniversary Date.
- 1.25 "Data Acquisition System" means physical devices, data monitoring equipment and apparatus associated with real-time monitoring of the quantities of AC energy generated by each Facility and complying with all requirements of Article 4.
- 1.26 "Daylight Hours" means hours that the inverter would normally be operating.
- 1.27 "Daylight Savings Adjustment" means the time periods that begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.
- 1.28 "Days" unless otherwise specified, shall mean calendar days.
- 1.29 "Degradation" means forecasted deterioration of the Facility calculated on an annual basis due to normal wear and tear and decreasing efficiency causing reductions in power output.
- 1.30 "Delivered Energy" the amount of Energy delivered by Seller as recorded by Seller's Meters.
- 1.31 "Delivery Point" means the metering point at the load side of the transformer for each Facility, as specified in Exhibit 5 of this Agreement.
- 1.32 "Disruption Period" means the period of time that a Facility is not available due to a Buyer Act.

- 1.33 "Deemed Generated Energy" means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Delivery Point during each measurement period, determined by taking into account during the relevant measurement period the radiometers or like devices at the Facility, or if such monitoring equipment is unavailable during a relevant interval, then using available data or interpolated data determined in accordance with Prudent Industry Practices.
- 1.34 "EA Agency" means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.
- 1.35 "Early Termination Fee" means the applicable fee associated with an early termination of this Agreement as set forth in the table in Exhibit 2 of this Agreement.
- 1.36 "Effective Date" means the date set forth in the first paragraph of this Agreement.
- 1.37 "Energy" means the electricity generated by each Facility pursuant to this Agreement, as expressed in units of kWh.
- 1.38 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from each Facility, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (i) 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; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Environmental Attributes for purposes of this Agreement expressly excludes Existing Financial Incentives.
- 1.39 "Environmental Attributes Reporting Rights" means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereunder.
- 1.40 "Environmental Laws" shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.

- 1.41 "Existing Financial Incentives" means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facilities or the Output generated by each Facility (including without limitation tax credits, accelerated depreciation, or bonus depreciation) that are in effect on the Effective Date and, (ii) any other financial incentives that result from the ownership and operation of the Generating Facilities or the Output that are in effect on the Effective Date.
- 1.42 "Expected Annual Contract Quantity" means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver from a Facility to Buyer hereunder in a given Contract Year, as set forth in Exhibit 5 (Expected Annual Contract Quantity) of this Agreement.
- 1.43 "Expected Commercial Operation Date" means the date on which the Parties expect a Facility to achieve Actual Commercial Operation, established in accordance with Article 3.
- 1.44 "Facility" has the meaning set forth in the Recitals, as further described in Exhibit 1.
- 1.45 "Fair Market Value" or "FMV" means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry would determine a photovoltaic system to have when negotiated in an arm's-length, free market transaction between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.
- 1.46 "Financing Party" means, as applicable (i) any Person from whom Seller leases the Generating Facilities or (ii) any Person who has made or will make a loan to or otherwise provide capital to Seller with respect to the Generating Facilities.
- 1.47 "Force Majeure Event" has the meaning set forth in Article 8.
- 1.48 "Full Assignment" has the meaning set forth in Section 12.2.
- 1.49 "Generating Facilities" or "PV System" means each of Seller electricity generating facility as more particularly described in Exhibit 5 of this Agreement, excluding the Project Sites, land rights, and interests in land.
- 1.50 "Governmental Authority" means any federal or state government, or political subdivision thereof, including, any municipality, township or county, special district or any other entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.51 Not used.
- 1.52 "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may

give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, and by-products.

- 1.53 "Interconnection" means the interconnection of the Project Site electrical system to the Transmission System, including construction, installation, operation, and maintenance of all interconnection facilities.
- 1.54 "Interconnection Agreement" means the agreement between Buyer and the Local Electric Utility which sets forth the terms and conditions for Interconnection of the Facility and the Project Site electrical system to the Transmission System, as amended from time to time.
- 1.55 "Investment Tax Credit" or "ITC" means the federal tax credit associated with the ownership of eligible renewable energy projects as available under Section 48 of the Internal Revenue Code (26 U.S.C. Section 48).
- 1.56 "ISO Tariff" means the Federal Energy Regulatory Commission-approved tariff under which the California Independent System Operator (ISO) operates.
- 1.57 "Kiosk" means a single viewing station for the Buyer and the general public to view the production of electricity of the Generating Facilities as defined in Article 4.1(c)
- 1.58 "KW" means one kilowatt of power or nameplate capacity expressed as peak power DC (direct current).
- 1.59 "kWh" means one kilowatt of electricity supplied for one hour.
- 1.60 "Holidays" for the purposes of this Agreement are New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The dates will be those on which the holidays are legally observed.
- 1.61 "Interest Rate" means, for any date:
 - (a) The per annum rate of interest equal to the "Prime Rate" published in The Wall Street Journal under "Money Rates" or such date (or if not published on such date on the most recent preceding day on which published); plus
 - (b) Two percentage points (2%); provided, in no event may the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
- 1.62 "Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer & Seller at the applicable Project Site.
- 1.63 "Local Electric Utility Tariffs" means the duly authorized tariff, rules, schedules, protocols and

other requirements of PG&E, as these may be amended from time to time.

- 1.64 "Lost Output" means the Deemed Generated Energy calculated during Lost Output Events for the relevant Measurement Period.
- 1.65 "Lost Output Event" has the meaning set forth in Section 4.1(d).
- 1.66 "Measurement Period" has the meaning set forth in Section 4.1(d).
- 1.67 "Meter" or "Meters" means the physical metering devices, data acquisition equipment and apparatus associated with the meters owned by Seller and used to determine the quantities of Energy generated by each Facility and to record other related parameters required for the reporting of data to Seller.
- 1.68 "Metered Energy" means the amount of Energy measured at the Meter for each Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.
- 1.69 "Milestone" means a defined and significant event that will occur during the engineering, construction, and installation of the Facility, as identified in the Request for Proposals and Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications) including, without limitation, completion of Commissioning Tests, issuance of a PG&E permission to operate notification, commissioning of the Data Acquisition System, and the occurrence of the Actual Commercial Operation Date.
- 1.70 "MW" means one megawatt of power or nameplate capacity expressed as peak power DC (direct current).
- 1.71 "MWh" means one megawatt of electricity supplied for one hour.
- 1.72 "Outage" means a physical state in which all or a portion of the Facility is unavailable to provide Energy to the Delivery Point.
- 1.73 "Output" means (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.
- 1.74 "Parties" means Buyer and Seller, and each such Party's respective successors and permitted assignees.
- 1.75 "Party" means Buyer or Seller, and each such Party's respective successors and permitted assignees.
- 1.76 "Permits" means local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of a Facility.
- 1.77 "Person" means an individual, corporation, partnership, Limited Liability Company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

- 1.78 "PG&E" means Pacific Gas and Electric Company, who is the Local Electric Utility, as defined herein.
- 1.79 "Preliminary Requirements" has the meaning set forth in Section 3.7.
- 1.80 "Prevailing Wage" means the State of California Public Works Contract Requirements pursuant to sections 1770 et seq. of the California Labor Code.
- 1.81 "Project Site" means the real property, on which each Facility is to be built and located, as described in Exhibit 1 (License Agreement) to this Agreement.
- 1.82 "Prudent Industry Practice" means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expediency; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expediency. Prudent Industry Practices include but are not limited to an optimum practice, method, selection of equipment or act.
- 1.83 Not used.
- 1.84 "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code section 399.12(h) as may be amended from time to time or as further defined or supplemented by applicable law.
- 1.85 "Renewal Term" has the meaning set forth in Article 2.1.
- 1.86 "Requirements of Law" means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.
- 1.87 "Schedule" "Scheduled" or "Scheduling" means the actions of Seller, Buyer and /or their designated representatives, including each Party's Local Electric Utility, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered for each interval on any given day on which the delivery of Energy is scheduled to occur during the Term at the Delivery Point.
- 1.88 "Seller" has the meaning set forth in the first paragraph of this Agreement, and for purposes of access rights and other rights necessary for Seller to perform its obligations hereunder, the term "Seller" includes Seller's authorized agents, contractors and subcontractors.
- 1.89 "Seller Address" means: [Project Company, LLC] 1814 Franklin Street Floor 7, Oakland, CA 94612.

- 1.90 "Seller Default" has the meaning set forth in Section 10.2(a).
- 1.91 "Seller's Project Management Team" means individuals identified by Seller as responsible for oversight and contract management of all phases of project design/build, operations, maintenance, verification and billing account management.
- 1.92 "Solar Insolation" means the amount of solar energy in kWh per square meter falling on a particular location.
- 1.93 "Substantial Completion" means when (i) installation of all necessary components and systems of a Facility (except for completion of painting, final grading, and similar portions of the construction work not affecting the operability, safety, or mechanical and electrical integrity of the Facility) have been completed; (ii) the Facility is mechanically and electrically sound; and (iii) the Facility is ready for initial operation, adjustment, and testing.
- 1.94 "Taxes" has the meaning set forth in Section 5.2..
- 1.95 "Term" has the meaning set forth in Section 2.1.
- 1.96 "Transmission System or Local Electric Utility Electricity Grid" means the facilities used for the distribution and transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.
- 1.97 "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE 2: TERM

- 2.1 **TERM:** The term of this Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the Actual Commercial Operation Date of the Facility ("Initial Term", and together with any Renewal Terms, the "Term"), unless and until terminated earlier pursuant to the provisions of this Agreement. After the Initial Term, this Agreement may renew for a Facility, or all of the Generating Facilities, for additional five year terms (each a "Renewal Term"), if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the Initial Term, or any Renewal Term, as the case may be. For each renewed Facility, the Parties shall confer and agree on a schedule for the Contract Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity for any Renewal Term. The remainder of the terms and conditions shall remain substantially the same for each Renewal Term as for the Initial Term. If Seller consents to renewal of a Facility, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, this Agreement shall expire as to that Facility as of the last day of the Initial Term. No later than sixty 60 days after Seller provides consent to a Renewal Term, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity for such Renewal Term, Buyer shall confirm to Seller in writing of its intent to proceed with its option for a Renewal Term. Documentation of any such Renewal Term and changes to Contract Price, Early Termination Fees and Expected Annual Contract Quantity shall be in the form of an amendment to this Agreement. In the event Buyer does not provide such confirmation, this Agreement shall expire as of the last day of the Initial Term or applicable Renewal Term for such Facility. Upon expiration of the Initial or Renewal Term, Seller shall cause the Facility to be removed from the Project Site pursuant to Article 10.5(a). All timelines for action pursuant to this Section 2.1 may be extended at the Parties' mutual written agreement.
- 2.2 **BUYER'S EXERCISE OF PURCHASE OPTION:** So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase (the "Purchase Option") a Facility for a purchase price equal to its FMV (the "Buyout Payment"), at any point after ninety-one (91) days after each of the sixth (6th), twelfth (12th), or eighteenth (18th) anniversary of the Actual Commercial Operation Date of the Facility, or ninety (90) days prior to the end of Initial Term or Renewal Term, if applicable. If Buyer chooses to exercise the Purchase Option, the following steps shall be followed by the Parties:
- (a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the Facility on a date certain (such date, the "Buyout Date").
 - (b) For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in Article 2.2 (a), the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV as of the Buyout Date. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Facility on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the FMV be less than the aggregate

of: (i) the net present value (using a discount rate of nine percent 9%) of the projected payments over the Term, had the Term remained effective for the full initial Term, and (ii) any and all other amounts previously accrued under this Agreement and owed by Buyer to Seller as of the date of Facility title transfer. Within sixty (60) days of the selection of such appraiser, s/he shall evaluate and determine the FMV of the applicable Facility as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be borne by Buyer.

- (c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall, no later than sixty (60) days from the date of notice referred to in Article 2.2 (a), retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry. Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall mutually select a third nationally recognized independent, third-party appraiser with experience in the solar photovoltaic industry, whose services shall be equally paid for by the Parties. Within sixty (60) days of the selection of such third appraiser, the three appraisers shall evaluate and determine the FMV of the Facility and shall submit their reports to both Parties. The appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers' valuations shall be deemed to be the FMV of the Facility. If no such valuation may be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the Facility. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.
- (d) No later than sixty (60) days after determination of the FMV of the Facility, Buyer shall confirm to Seller in writing of its intent to proceed with its option to purchase the Facility at the Buyout Payment determined pursuant to this Article 2.2. In the event Buyer does not provide such written confirmation, the provisions of this Agreement shall be applicable as if Buyer had not exercised the Purchase Option.
- (e) If Buyer confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (i) cause title and ownership of the Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (ii) to the extent such warranties are assignable, assign all warranties for the Facility to Buyer. Buyer shall pay the Buyout Payment to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Buyer by Seller for payments under this Agreement. Upon such execution of documents and payment of the Buyout Payment, as to the Facility this Agreement shall terminate automatically and Buyer shall own the Facility and all Environmental Attributes and Existing Financial Incentives, if any, relating to the Facility. For the avoidance of doubt, payment of the Buyout Payment shall be in lieu of and instead of any payments described in Article 4 accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with the Buyer to give prompt effect to this transfer.
- (f) All other personal property of the Seller not included in the Buyer's purchase shall be

removed by Seller from the Project Site within ninety (90) days of the Buyout Date at no cost to Buyer.

- 2.3 **TERMINATION:** Buyer may terminate this Agreement as to any Facility prior to the expiration of the Initial Term without cause upon sixty (60) days' prior written notice. If Buyer elects to terminate this Agreement without cause for a Facility, Buyer shall pay to Seller the applicable Early Termination Fee. The Early Termination Fee shall be the applicable amount set forth in the table in Exhibit2. However, if Buyer terminates this Agreement for reasons otherwise specified in this Agreement including, but not limited to: (i) termination for CEQA compliance (Section 3.6); (ii) termination for Force Majeure (Article 8); and (iii) termination for failure of the Preliminary Requirements (Section 3.9), Buyer is not liable to the Seller for the Early Termination Fee. In the event that Buyer terminates this Agreement without cause, Seller shall, within one hundred eighty (180) calendar days of the notice of termination from Buyer, or Buyer's payment of the Early Termination Fee, if applicable, shall cause the applicable Facility to be disconnected and removed from the Project Site, and shall remediate and restore the Project Site to the condition preceding the installation of the Facility as set forth in Section 10.5.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

- 3.1 All elements of engineering, construction and installation of the Generating Facility are Seller's sole responsibility, provided that Buyer cooperates in good faith with Seller to satisfy the requirements of the Local Electric Utility.
- 3.2 Seller shall provide the services as described herein and in Exhibit 11 (Detailed Scope of Work).
- 3.3 The Contract Price includes all required American with Disabilities Act ("ADA") obligations and costs. However, for the avoidance of doubt, Seller's ADA obligations shall apply only to the Generating Facility and to the construction and installation work performed by Seller or Seller's contractors; such ADA obligations shall not apply to any building, facility, parking lot or path of travel outside of the Generating Facility footprint.
- 3.4 Seller shall provide weekly status reports from the Effective Date through the Actual Commercial Operation Date, as well as any additional briefing requested by Buyer.
- 3.5 Seller will create, maintain and provide to Buyer, minutes of meetings between Buyer's representatives and Seller's Project Management Team.
- 3.6 CEQA Compliance
 - (a) Compliance with the California Environmental Quality Act ("CEQA"), California Pub. Res. Code § 21000 et seq., is a condition precedent to the Buyer's obligations under this Agreement. The Seller shall not have any right to install a Facility until the Buyer has fully complied with CEQA, issued a statement to Seller attesting to the fact that Buyer has fully complied with CEQA as it relates to the Facility included in this Agreement, and issued a notice to proceed to Seller. In most cases, the Buyer expects to satisfy the CEQA requirements with a Notice of Exemption for each Generating Facility.
 - (b) If a Notice of Exemption is challenged by a third party and/or if the Buyer, in its discretion, determines that a mitigated negative declaration ("MND") or environmental impact report ("EIR") is required to comply with CEQA, then Buyer shall, provide Seller with a written statement detailing the reasons that Buyer believes that a MND or an EIR is required to comply with CEQA, the estimated cost to comply with CEQA for the Facility, and a statement that it will or will not pay for the estimated cost to comply with CEQA for the Facility. If Buyer declines to pay for all of the estimated costs to comply with CEQA, then this Agreement shall terminate as to the Facility, and neither Party shall have any liability to the other Party (other than any such liabilities that have accrued prior to such termination).
 - (c) Within ten business days after the Effective Date, Buyer shall provide Seller either (1) a notice to proceed based on a Notice of Exemption under Section 3.6(a), or (2) the notice described pursuant to Section 3.6(b), including Buyer's election regarding payment of costs.
- 3.7 Engineering - Design Phase

During this phase, Seller shall proceed with all activities necessary to allow commencement of the construction phase, including completing the Preliminary

Requirements (as set forth below) within the timeframes established in Exhibit 12 (Project Site Milestones). Upon completion of this phase, Seller shall proceed with the installation and construction phase. Seller's failure to meet Preliminary Requirements will be subject to Section 3.9 below.

(a) Preliminary Requirements:

- (i) Within five (5) business days after the execution of this Agreement, the Seller must comply with the insurance requirements for the design phase. Seller shall maintain such coverage throughout this phase.
- (ii) Seller must comply with all system design requirements set forth in Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications).
- (iii) Within the timeframe set forth in Exhibit 12 (Project Site Milestones), as such timeframe may be extended pursuant to this Agreement:
 - (1) Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. The Expected Commercial Operation Date shall be no later than the Commercial Operation Deadline, or any extensions thereof.
 - (2) Each Party, upon request, shall furnish current certificates evidencing that the insurance coverage required is being maintained.
- (iv) Within the timeframe, set forth in Project Site Milestones, as such timeframe may be extended pursuant to this Agreement:
 - (1) Seller must have obtained a financing commitment for construction of each Facility and submitted a signed term sheet or redacted financing agreement as satisfactory proof of such financing commitment to the Buyer or in the alternative, Seller may certify in writing that Seller will be self-financing the construction of the Facility and that Seller has sufficient funds to do so. Such certification shall be submitted by Seller in the Performance Bond in Exhibit 10 of this Agreement.
- (v) Within the timeframe set forth in the, Exhibit 12 (Project Site Milestones) for a Facility, as such timeframe may be extended pursuant to this Agreement, Seller must have applied for a building permit for the Facility.
- (vi) Seller must have obtained approval from the Buyer, which shall not be unreasonably withheld, conditioned or delayed of the final 100% detailed engineering drawings and specifications for the Facility. Seller must submit 50%, 90% and final 100% detailed engineering drawings and specifications for the Facility to Buyer for approval no later the date set forth in the Project Site Milestones as such date may be extended pursuant to this Agreement. For each submittal of detailed engineering drawings and specifications, Buyer shall have fifteen (15) business days to provide written approval to Seller.

3.8 Construction Phase

- (a) The Seller must comply with the insurance requirements for the construction phase included as included in Exhibit 8 (Insurance Requirements). Seller shall maintain such coverage throughout this phase.
- (b) Seller will cause each Facility to be designed, engineered, installed and constructed substantially in accordance with Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications) of this Agreement and Applicable Law, including but not limited to, the payment of Prevailing Wages, as applicable. All construction of a Facility, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of the photovoltaic systems, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Prior to the commencement of construction on a Facility, Seller shall deliver to Buyer for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, a complete set of plans and specifications relating to the installation of the Facility, which shall comply with all applicable uniform construction codes. Buyer shall be deemed to have approved such plans and specifications if Buyer fails to transmit notice of disapproval within the timeframe established in the Exhibit 12 (Project Site Milestones). Buyer shall have the right, but not the obligation, to inspect all construction solely for the purpose of confirming that Seller is adhering to the specifications provided for in Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications) to this Agreement, provided that Buyer's inspections are done at a reasonable frequency and during reasonable dates and times.
- (c) Seller must comply with all requirements set forth in applicable building and electrical codes and Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications).
- (d) Seller must be register with the State of California in order to be considered for contract award, Seller must be registered with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration). Registration must remain current throughout the project entirety. It is the Seller's responsibility to not allow their PWC Registration to lapse during the project and to ensure all Seller's registrations remain current. If any penalties are issued to the City for Seller being unregistered with the DIR or for a lapse in a Seller's PWC Registration, these penalties will be passed onto the Seller.

3.9 Parties' Rights to Terminate Prior to Commercial Operation

- (a) Buyer's Rights to Terminate: If Seller fails to complete the Preliminary Requirements in conformance with Section 3.7 with respect to a Facility, Buyer may terminate this Agreement as to the applicable Facility without penalty, liability or expense of any kind to Buyer by providing to Seller a written notice of termination after the deadline for completion of the Preliminary Requirements, as such deadline may be extended pursuant to this Agreement; provided, however that any such written notice of termination for non-compliance with Article 3.7, sections (a)(i) - (a)(v) shall be provided by Buyer to Seller prior to the Commencement of Work Date and any written notice of termination for noncompliance

with Article 3.7 section (a)(vi) may be provided by Buyer after the Commencement of Work Date. The Buyer may extend deadlines at its option. If Buyer elects to terminate this Agreement pursuant to this Section 3.9(a), Seller shall take all actions necessary to return the Project Site to the condition Seller first encountered them, ordinary wear and tear excepted, at no cost to the Buyer. Buyer's right to terminate hereunder shall not be subject to the alternative dispute resolution procedures in Section 9.1. If Buyer determines that it wishes to exercise its termination right pursuant to this Section 3.9(a), Buyer shall give written notice to Seller within fifteen (15) days of such determination, specifying the basis for the termination. Upon receiving such notice, if Seller is able to cure, Seller shall have 45 days to provide a cure for the circumstance identified by Buyer as the basis for termination. The Buyer shall not exercise its rights under section 3.9(a) until it has provided a written notice to the Seller of its intent to do so and allowed the Seller 45 days to attempt to cure. The Seller shall have the option, but not the obligation, to cure.

- (b) Seller's Rights to Terminate: In the event that any of the following events or circumstances occur prior to the Actual Commercial Operation Date for a Facility, Seller may (at its sole discretion) terminate this Agreement, subject to Sections 3.9(d) and (e), as to the Facility, in which case neither Party shall have any liability to the other Party as to the Facility:
 - (i) Seller has not received a fully executed (i) Exhibit 1 (License Agreement) to this Agreement), and (ii) a release or acknowledgement from any mortgagee of the Project Site, if required by Seller or Seller's Financing Party, to establish the priority of its security interest in the Facility.
 - (ii) Seller has not received evidence that interconnection services will be available with respect to energy generated by the Facility.
 - (iii) Seller has reasonably determined that there are easements, covenants, conditions, or restrictions or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the Facility.
- (c) Remediation: If Seller wishes to exercise its termination rights listed in section 3.9(b) with regard to a specific Facility, Seller shall take all actions necessary to return the Buyer's Project Site where the applicable Generating Facility was to be installed to the condition the Seller first encountered it in within ninety (90) days.
- (d) Buyer Option to Cure: Notwithstanding anything to the contrary, if Seller determines that it wishes to exercise termination pursuant to section 3.9(b), Seller shall give written notice to Buyer within 15 days of such determination, specifying the basis for the termination. Upon receiving such notice, if Buyer is able to cure, Buyer shall have 45 days to provide a cure for the circumstance identified by Seller as the basis for termination. The Seller shall not exercise its rights under section 3.9(b) until it has provided a written notice to the Buyer of its intent to do so and allowed the Buyer 45 days to attempt to cure. The Buyer shall have the option, but not the obligation, to cure.
- (e) Mutual Rights to Termination: Either Party shall have the right to terminate this Agreement,

without liability to the other Party if:

- (i) Seller and Buyer mutually determine that the Project Site, as is, is insufficient to accommodate the Facility.
- (ii) Seller or Buyer reasonably determines that there exist site conditions at the Project Site (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the Facility or would adversely affect the electricity production from the Facility as designed; provided, however, that prior to terminating the Agreement pursuant to this Section 3.9(e)(ii), the Parties shall enter into good faith negotiations to equitably adjust the pricing for Energy hereunder to account for the increased costs of installing the Facility.
- (iii) Seller or Buyer reasonably determines that there has been a material adverse change in the rights of the Buyer to occupy the Project Site or the Seller to construct the Facility on the Project Site.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale

- (a) Commencing on the Actual Commercial Operation Date and continuing throughout the Term, subject to this Article 4, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for, the Output as follows:

Energy Pricing: The pricing for Energy delivered at the Delivery Point shall be the Contract Price for the current Contract Year. The invoice for Energy delivered by the Seller for the applicable monthly billing period shall be determined as follows:

P = Payment to Seller for Energy supplied to the Buyer over the billing period.

$P = EE \times EP$

EE = the total kWh of Delivered Energy to Buyer by Seller during the billing period.

EP = the Contract Price as per Exhibit 4 (Contract Price) to the Agreement.

- (b) Intentionally left blank.

(c) Meters

- (i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric

Utility Tariffs and the Buyer-PG&E Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least every two (2) years. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better and monitoring results from Seller's Performance Monitoring and Reporting Service (PMRS) that is viewable by Buyer at all times. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website.

- (ii) Single Viewing Kiosk for the Generating Facility: At the location of Buyer's choice, Seller will install a single Kiosk for viewing by the general public consisting of a 20"LCD screen sufficient to view the Data Acquisition System ("DAS") monitoring of the Generating Facilities. The monitor shall be housed in a cabinet whose design, aesthetics, and cost are mutually agreed upon by Buyer and Seller. Buyer will allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet. Seller's total installed cost of the Kiosk consisting shall not exceed \$5,000 US dollars. Following installation, Buyer shall provide and maintain communications equipment and services to the Kiosk.
- (iii) Communications Equipment. After the Actual Operating Date Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters.
- (iv) Meter Updates. Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facility for the purpose of verifying Meters.
- (d) Delivery Obligation. Beginning on the Actual Commercial Operation Date for each applicable Generating Facility, such Generating Facility shall produce not less than ninety percent (90%) of the applicable Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) during the Initial Term, measured every five (5) years (each five year period a "Measurement Period"), unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity is due to (a) Facility failure, damage or downtime attributable to third parties, (b) resulting from general utility outages or any failure of any electric grid or any utility or grid ordered curtailment, (c) a Force Majeure Event, (d) acts or omissions of Buyer of any of its obligations hereunder, (e) manufacturing failure of any component of the Facility or failure by any manufacturer of any component of the Facility to timely honor its warranty obligations, (f) soiling conditions exceeding modeled soiling conditions¹, or (g) variations between modeled Insolation and temperature conditions

¹ Soiling shall be modeled as a baseline soiling loss of 1% per month which shall increase monthly by 1% unless the monthly average rainfall exceeds 1.2" or a manual array washing is planned.

and the actual Insolation and temperature at the Project Site in any applicable contract year (each event a "Lost Output Event"); provided Buyer has received written notice from Seller of such Lost Output Events. Subject to the terms and conditions of this Agreement, beginning on the fifth anniversary of the Actual Commercial Operation Date if, the actual output of such Generating Facility for the five (5) year period prior to such anniversary (the "Actual System Output") does not equal or exceed the 90% of Expected Annual Contract Quantity for such five (5) year period, Seller will credit Buyer on its next invoice an amount equal to the product of (i) the average of the annual Contract Prices found in the applicable site Exhibit 4 during such Measurement Period multiplied by (ii) the difference between the Actual System Output plus the Lost Output and the Expected Annual Contract Quantity for such Measurement Period.

- (e) Excess Energy. Buyer agrees to purchase up to 110% of the Expected Annual Contract Quantity. Buyer shall have the option, but not the obligation, to purchase the Output of any particular Generating Facility that exceeds 110% of the Expected Annual Contract Quantity. Seller will first offer any Energy beyond the 110% cap to Buyer and, only if Buyer does not exercise its option to purchase all or a portion of such excess Energy, Seller shall be permitted to resell the excess Energy, provided such sale is in accordance with all applicable laws

4.2 Monitoring System and Web Interface

- (a) Seller shall install, maintain, control, and operate a monitoring system for each Facility meeting the following requirements (the "Monitoring System"):
 - (i) The Monitoring System shall include, without limitation, ability to monitor revenue grade AC production data; weather data, (including ambient temperature and wind speed); and shall include a pyranometer.
 - (ii) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, and greenhouse gas emissions reduced.
 - (iii) The Monitoring System shall meet or exceed PG&E monitoring and reporting standards.
 - (iv) Additional requirements and specifications for monitoring are described in Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications).

4.3 Delivery Point

- (a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller is responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer is responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.4 Environmental Attributes

- (a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, title and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees that the Contract Price, as applicable is the full compensation for all Environmental Attributes.
- (b) Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes to any Person other than Buyer.
- (c) During the Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to the Buyer belong to anyone other than the Buyer, and the Buyer may report under any program that such attributes purchased hereunder belong to it.
- (d) WREGIS- Prior to the Actual Commercial Operation Dates of a Facility, Seller shall register the Facility in WREGIS, and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Facility are issued and tracked through WREGIS for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer as applicable.
- (e) Documentation. At Buyer's option, the Parties shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

4.5 Tax Credits and Financial Incentives

- (a) Buyer agrees to provide Seller information and documentation in support of Seller's rights and interests in Internal Revenue Service tax related benefits.

4.6 Project Site Security.

- (a) Throughout the Term, Buyer will provide security for each Facility to the extent of its normal security procedures, practices, and policies that apply to the Project Site.
- (b) Buyer will advise Seller immediately upon observing any damage to any Facility. Upon request by Seller, such as Seller receiving data indicating irregularities or interruptions in the operation of a Facility, Buyer shall, as quickly as reasonably practicable, send a person to observe the condition of the applicable Facility and report back to Seller on such observations.

4.7 Limitations on Obligation to Deliver

- (a) Except as expressly provided in this Agreement, Seller does not warrant or guarantee the amount of electric energy to be produced by each Facility for any hourly, daily, monthly, annual or other period.
- (b) Buyer acknowledges and agrees that Seller is not an electric utility or public service company and does not assume any obligations of an electric utility or public service company to supply Buyer's electric requirements. Provider is not subject to rate review by any Governmental Authority.

4.8 No Resale of Electricity

- (a) The energy purchased by Buyer from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller, and Buyer shall not take any action which would cause Buyer or Seller to become an electric utility or public service company. For the avoidance of doubt, the sale or provision of energy to the local electric utility, whether compensated or not, under a Net Metering program that anticipates such sale or provision shall not be restricted by this Section.

4.9 Title to Facilities

- (a) Seller shall retain title to and be the legal and beneficial owner of each Facility at all times. Absent further written election by Seller, each Facility shall (i) remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Project Site, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code.
- (b) Throughout the Term, Buyer and Seller warrants and represents that it shall keep each System free from all liens (other than those created by Seller or its creditors). Seller shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to each Facility in order to protect its title to and rights in each Facility.
- (c) The Parties intend that neither Buyer nor any party related to Buyer shall acquire the right to operate a Facility or be deemed to operate a Facility for purposes of Section 7701 (e)(4)(A)(i) of the Internal Revenue Code, as amended, and the terms of this Agreement shall be construed consistently with the intention of the Parties.
- (d) Buyer shall provide timely notice of Seller's title and sole ownership of each Facility to all Persons that have, or may come to have, an interest in or lien upon the real property comprising the Project Site. If Seller determines to treat any component of a Facility as real property, it will seek Buyer's consent in writing along with the reasons therefore, and any required third party consents arising by reason of such characterization. Buyer shall not unreasonably withhold its consent.
- (e) Notwithstanding the foregoing, Financing Party may hold title to a Facility pursuant to a sale/leaseback transaction.

4.10 Interconnection Deactivated

- (a) If an interconnection with the Local Electric Utility becomes deactivated due to the acts or omissions of Buyer such that a Facility is no longer able to produce energy or deliver energy to the Local Electric Utility, Buyer will pay Seller any lost Seller revenues associated with the period of such deactivation.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment

- (a) During the Term on a monthly basis Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer, in accordance with Article 4. Such payment is full compensation to Seller for the Delivered Energy received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form acceptable to the Buyer, and must include a unique invoice number.
- (b) All payments shall be made on or before thirty (30) days after receipt of an invoice. Each Party shall make payments by electronic funds transfer, if available, or by other mutually agreeable method(s), to the account designated by the other Party.
- (c) All payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.
- (d) Disputed Payments. If a **bona fide** dispute arises with respect to any invoice, Buyer shall pay the undisputed portion of the invoice and state, in writing, the basis for the dispute. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount in dispute from the date becoming past due under such invoice until the date paid.

5.2 Allocation of Taxes and Possessory Interest Tax

Buyer 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 Generating Facility or the interconnection of the Generating Facility to the Utility's electric distribution system, including property taxes on the Generating Facility; provided, however, Buyer will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Buyer due to the action or omission of Seller. For purposes of this section, "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. Nothing shall obligate or cause a Party to pay or be liable to pay Taxes for which it is exempt under the law.

ARTICLE 6: REMOVAL OF GENERATING FACILITY

6.1 Removal and Disposal Fund Requirements – Seller to provide a Removal and Disposal Bond to Buyer as described below.

- (a) Estimate of Removal Costs. No later than five hundred and forty-five (545) days prior to the expiration of the Term for each Facility, Seller shall provide Buyer a written estimate of the cost to remove the applicable Facility and restore the applicable Project Site to its condition prior to the installation of the Facility, excluding ordinary wear and tear. The Parties shall meet and confer within thirty (30) days after such written estimate is received by Buyer to resolve any concerns regarding such estimated cost. Seller shall provide to Buyer a Removal and Disposal Bond equal to the agreed upon estimate not less than three hundred and sixty-five (365) days prior to the expiration of the Term for each Facility.

6.2 Abandonment.

If Seller fails to complete its removal and restoration obligations under this Agreement within one hundred eighty (180) Days of after termination of this Agreement, then, in addition to Buyer's other remedies under this Agreement, at law or in equity for such failure, any part of a Facility and all personal property of Seller not removed from the Project Site within one hundred eighty (180) Days after such termination of this Agreement shall be deemed abandoned by Seller, and shall become the property of Buyer, and Buyer may, at its option, remove and warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. Buyer shall have no liability to Seller for any property deemed abandoned per this Section 6.2.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

- 7.1 Seller shall provide Buyer with an as-built plan set after project completion.
- 7.2 Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the technical requirements set forth in Exhibits 13 (General Provisions, Special Provisions, and Technical Specifications), access rights to the Project Sites, all Requirements of Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 13 (General Provisions, Special Provisions, and Technical Specifications) for the equipment detailed therein.
- 7.3 Seller agrees to pay Prevailing Wages in connection with the construction and operation of the Generation Facilities. Seller also agrees use commercially reasonable efforts to plan subcontracting bids and staffing levels according to Exhibit 9 (Utilization of Local Workforce).
- 7.4 Milestones

(a) Generally.

Seller shall diligently pursue all Milestones established pursuant to Exhibit 12 (Project Site Milestones), and the Expected Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facilities, and that Seller shall endeavor to achieve the Milestones for the development, financing and construction of the Generating Facilities in a timely fashion. Seller will use commercially reasonable efforts to achieve the Milestones set forth in this Agreement by the applicable deadlines, as such deadlines may be extended pursuant to this Agreement..

(b) Weekly Reports.

Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide weekly progress reports concerning the progress towards completion of the Milestones . In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to the Buyer (along with any supporting documentation) demonstrating the satisfaction of such Milestone. Seller shall provide to the Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as the Buyer may reasonably request from time to time.

(c) Notice of Failure to Achieve a Milestone.

Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event or a breach of this Agreement by Buyer, Seller shall so notify the Buyer in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may, or will have, on any other Milestone, and the measures to be taken to mitigate such impact.

(d) Facility Substantial Completion Inspection.

Seller shall notify Buyer when Substantial Completion of a Facility is achieved. At discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection of the Facility after Substantial Completion. The inspection shall be scheduled for a date, mutually agreeable to Seller and Buyer, which is within ten (10) Business Days of Seller's notification of Substantial Completion of the Facility. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Seller is responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to document actions taken in response to the punch list items. If requested by Buyer, Seller shall schedule and arrange a follow-up inspection for Buyer after all punch list items are resolved. All punch list items shall be resolved prior to the Actual Commercial Operation Date of the Facility except those items specifically excepted by mutual agreement between Buyer and Seller.

(e) Force Majeure Event.

In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed twelve (12) months. The extension provided for in this Section 7.4 shall be the only effect of a Force Majeure Event on Seller's obligations with respect to the Milestones.

(f) Waiver of Right.

The Buyer may, at its discretion, grant waivers for Seller's failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

7.5 Compliance: Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law, the Local Electric Utility Tariffs or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by this Agreement.

7.6 Maintenance, Audit and Inspection of Records

(a) Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and any lease or license relating to the Generating Facilities, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures

and disbursements charged to Buyer for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.

- (b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.

7.7 Insurance:

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 8 (Insurance Requirements) for the term of this Agreement.

7.8 Commissioning Tests:

Seller shall comply with all applicable Local Electric Utility requirements for pre- operational testing. In addition, no later than fourteen (14) days prior to conducting its Commissioning Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller's Commissioning Tests, Seller shall provide to Buyer written notification of the Actual Commercial Operation Date, including any relevant data demonstrating that Actual Commercial Operation has occurred. Buyer has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days' notice of the date of such tests.

7.9 Obligation to Interconnect:

Seller shall be responsible for the interconnection of the Facility to the Project Site electrical system and shall be solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Buyer shall at all times own and be responsible for the operation and maintenance of the Project Site electrical system at and from the Delivery Point.

Buyer shall, at its own cost and expense, enter into net metering arrangements by executing such agreements, including Interconnection Agreements, as may be required by the Local Electric Utility to permit the interconnection of the Facility with the Project Site electrical system and to allow any output of the Facility not consumed by the Project Site to flow to the Local Electric Utility. Buyer shall promptly provide copies of such agreements and arrangements to Seller when executed. Additionally, Buyer shall maintain and comply with all applicable Local Electric Utility agreements, including Interconnection Agreements, throughout the Term. If Buyer fails to maintain or comply with all applicable Local Electric Utility agreements throughout the Term and, as a result of Buyer's failure, Seller loses revenue or benefits hereunder, including Internal Revenue Service tax related benefits, then Buyer shall compensate Seller for

such lost revenues or benefits.

- 7.10 Facility Conformance to Buyer Specifications. Seller shall assure that each Facility remains in conformance with the most recent version of the record drawings approved by the Buyer and all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Seller has the right to modify the design of the Facility subject to the Buyer's approval, not to be unreasonably conditioned, delayed, or withheld. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Facility and the most recent version of the as-built drawings approved by the Buyer, or any specification or requirement of this Agreement. Within twenty (20) Days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer, which consent shall not be unreasonably withheld or delayed.
- 7.11 Coordination with Local Electric Utility and Western Electricity Coordinating Council ("WECC")
- (a) Local Electric Utility and WECC Standards. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the Local Electric Utility; (ii) WECC scheduling practices; and (iii) Prudent Utility Practices.
 - (b) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shutdowns, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit 6 [Operations Forecasts, Scheduling Protocols, & Monitoring].
- 7.12 Seller and Buyer shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Facility otherwise would be able to produce Energy. Seller is responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling. Planned and forced Outages shall be coordinated between Seller and Buyer in accordance with Exhibit 6 (Operations Forecasts, Scheduling Protocols, & Monitoring).
- (a) Buyer Act Outages. For each Facility, Buyer shall be permitted to be off line for a total of forty-eight (48) Daylight Hours per Contract Year during the Term, during which hours Buyer shall not be obligated to accept or pay for Output from a Facility. If Buyer's outages exceed a total of forty-eight (48) hours, Seller shall estimate the Deemed Generated Energy for such outages and invoice Buyer for such amount. In the event that a Buyer Act results in a Disruption Period that is greater than thirty (30) calendar days in any Contract Year, or more than eighty (80) days in the aggregate when added to all prior Disruption Periods, then Buyer shall (i) pay Seller for all work required by Seller to disassemble or move the Facility, which work shall be undertaken within thirty (30) days of Buyer notice to Seller, and (ii) continue to make all payments for the Deemed Generated Energy during such Disruption Period exceeding thirty (30) days annually, or eighty (80) days in aggregate, and (iii) reimburse Seller for lost revenue associated with any Existing Financial Incentives recaptured by a Governmental Authority during such Disruption Period exceeding thirty (30)

days annually, or eighty (80) days in the aggregate. For the purpose of calculating estimated Energy and lost revenue for such Disruption Periods, Energy shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the Disruption Period occurs within the first twelve (12) months of operation, the average over such period of operation).

- 7.13 Transmission and Distribution Maintenance Information: If either Party receives information from the Local Electric Utility regarding maintenance that will directly affect the Generating Facilities, it will provide the information promptly to the other Party.
- 7.14 Modifications to the Generating Facilities After Its Applicable Actual Commercial Operation Date After the Actual Commercial Operation Date of a Facility, Seller shall have no right to change, replace or alter the Facility nor attach fixtures or erect additions or structures in or upon the Facility (collectively "Alterations") without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. To the extent any change, replacement or alteration consists solely of modification or replacement of like-kind equipment it shall not be deemed to be an Alteration. Buyer shall not unreasonably delay, condition or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the Alterations, Buyer may impose reasonable requirements, including the reimbursement of any costs incurred by Buyer in responding to Seller's request or inspecting such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary Permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller's routine repair, replacement, or maintenance of the equipment components of the Facility shall not require Buyer's consent, but shall require sufficient advance notice to Buyer.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

(a) Excuse. Subject to Article 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event. "Force Majeure Event" means an event or circumstance that:

- (i) was not anticipated on the Effective Date.
- (ii) is not attributable to the fault or negligence or action or inaction on the part of that Party;
- (iii) is caused by factors beyond that Party's reasonable control; and
- (iv) 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) Subject to this Article 8, a "Force Majeure Event" may include, but is not limited to:

- (i) acts of Nature such as storms, floods, lightning and earthquakes;
- (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) Local Electric Utility transmission system or distribution system outage or failure not caused by Seller or Seller activities;
- (iv) war, riot, acts of a public enemy or other civil disturbance;
- (v) strike, walkout, lockout or other significant labor dispute;
- (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves;
- (vii) unforeseen subsurface conditions encountered at the Project Site despite Seller's exercise of reasonable diligence consistent with Prudent Industry Standards;;
- (viii) a change in Applicable Law after the Effective Date;

(c) Exclusion. "Force Majeure Event" does not include the following:

- (i) economic hardship of either Party except pursuant to 8.1(d);

- (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Article 8.1;
- (iii) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event.
- (iv) Events attributable to the fault or negligence or action or inaction on the part of Seller or Buyer, as the case may be.

8.2 Conditions

- (a) In addition to the conditions set forth in Article 8.1(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 written notice of such 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 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 written notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 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, upon thirty (30) days written notice after the Force Majeure Event. In the event that a Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and this Agreement as it relates to that Facility is thereby terminated, Seller shall be responsible for removing the applicable Facility and restoring the Project Site where the applicable 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 Buyer informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in a Facility being unable to function for a

period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Buyer with a plan to restore the Facility.

ARTICLE 9: DISPUTE RESOLUTION

- 9.1 The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party, other than the Seller's failure to comply with the Preliminary Requirements in Section 3.7 for which a specific Buyer termination procedure exists pursuant to Section 3.9 which shall not require compliance with Section 9.1. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator mutually agreeable to the parties whom they choose together, and share costs for such equally. In the event the dispute is not resolved through mediation, the Parties may pursue their legal rights through any other legally permissible means.;
- 9.2 Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy or otherwise negate the requirements of the Government Claims Act, if applicable.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Events of Default Generally.

The following is a list of non-exclusive events of default (each, an "Event of Default," and collectively "Events of Default") They shall constitute a Seller's default or Buyer's default as specified below and are in addition to those Events of Default specified in Sections 10.2 and 10.3:

- a) Seller delivers to Buyer, without Buyer's consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement; or
- b) If, for twelve (12) consecutive months, a Facility does not meet fifty percent (50%) of the Expected Annual Contract Quantity for such twelve-month period as specified in Exhibit 5 of this Agreement after adjustments for weather and Lost Output Events; or
- c) Seller sells or transfers Output to any Person other than Buyer, except as may be permitted herein; or
- d) Either Party fails to maintain any insurance required pursuant to this Agreement, and such failure is not cured within five (5) business days after notice by the other Party; or
- e) A court shall have made or entered any decree or order: (i) adjudging a Party to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of such Party or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of such Party in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of such Party and such decree or order shall have continued for a period of sixty (60) days; or (v) such Party shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- f) The sequestration or attachment of or execution or other levy by a Governmental Authority on a Party's interest in this Agreement or the Project Site or any improvements located thereon shall have occurred and such Party shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- g) The occurrence of any act or omission on the part of a Party which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for a Party to lawfully conduct the operations which a Party is required or permitted to conduct on the Project Site and the defaulting Party fails to cure such breach within thirty (30) days after the nondefaulting Party's written notice or (B) fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed; or

- h) A mechanics lien is filed against the Facility because of any act or omission of the Seller, that has not been discharged, bonded or contested by the Seller in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice.

10.2 Seller Defaults and Buyer Remedies

- (a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):
 - (i) A Bankruptcy Event shall have occurred with respect to Seller;
 - (ii) Seller fails to pay Buyer any undisputed amount owed under this Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount;
 - (iii) Seller breaches any material term of this Agreement or the License Agreement, (including, where applicable to Seller, the circumstances listed in Section 10.1), and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed; and
 - (iv) Any material representation or warranty made by Seller hereunder is false or misleading in any material respect and such misrepresentation is not cured within ten (10) business days from the earlier of (a) written notice from the Party affected by the misrepresentation and (b) the actual discovery or determination by any responsible personnel of a Party of its misrepresentation; provided, that if the Party that has made the misrepresentation commences an action to cure such misrepresentation within such ten (10) business day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days after the expiration of the initial ten (10) business day period.

- (b) Buyer's Remedies. If a Seller Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to each Financing Party - the identity of which Seller will have provided to Buyer, and such Seller Default has not been cured within thirty (30) days of delivery of such notice or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Buyer within such thirty (30) day period if a longer cure period is needed. Any Financing Party is an intended third-party beneficiary of this Article 10. Upon Buyer's exercise of termination rights pursuant to this subsection, Buyer may, at its option, provide written notice to Seller to remove the Facility from the Project Site of the Buyer. If Buyer makes such election, Seller shall be responsible for removing the Facility at its own cost and restoring the site where the Generating Facility was installed to its pre-installation condition, within 180 days of provision of written notice.

- (c) No Early Termination Fee. Buyer's exercise of its rights under this section 10.2 will not obligate it to pay an Early Termination Fee.

10.3 Buyer Defaults and Seller Remedies

- (a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):
- (i) A Bankruptcy Event shall have occurred with respect to Buyer;
 - (ii) Buyer fails to pay Seller any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Seller of such past due amount, which Seller shall send to Buyer 45 days after amount is due;
 - (iii) Buyer breaches any material term of this Agreement or the License Agreement, (including where applicable to Buyer, the circumstances listed in Article 10.1), if (A) such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;
 - (iv) Buyer's modification or change in use of the Project Site that will or would reasonably be expected to impact the Output of the Facility without Seller's prior written consent; and
 - (v) Buyer's failure to provide Access Rights to a Facility as required pursuant to Schedule 1.
- (b) Seller's Remedies. If a Buyer Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, and subject to Article 11, Seller may terminate this Agreement and demand payment of the Early Termination Fee by Buyer as specified in Exhibit 2 of this Agreement. Upon such termination, Seller shall remove the applicable Facility and shall remediate and restore the Project Site to the condition preceding the installation of the applicable Facility as set forth in Section 10.5.

10.4 Limitation of Liabilities

- (a) Except as otherwise specifically and expressly provided in this Agreement, and except as may be included in the Early Termination Fee, neither Party shall be liable to the other Party under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its buyers or members to which service is made.
- (b) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).
- (c) To the extent an Event of Default occurs as to an individual Facility, but not all of the Generating Facilities, this Agreement will terminate as to such Facility and will remain in full

force and effect as to any Facility not impacted by the default.

10.5 Effect of Termination - Survival of Obligations

- (a) Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon expiration of any Initial or Renewal Terms, or upon termination of this Agreement as to a Facility for any reason other than the exercise of the Purchase Option pursuant to Section 2.2, Seller shall disconnect and remove the Facility from the Project Site and shall remediate and restore the Project Site to the condition preceding the installation of the Facility, ordinary wear and tear excepted, at no cost to the Buyer. Within one hundred eighty (180) calendar days after payment of the Early Termination Fee, Seller shall remove the Facility and shall remediate and restore the Project Site to the condition preceding the installation of the Facility, ordinary wear and tear excepted. If the Facility is located on Buyer's roof, Seller shall ensure that its removal shall not affect the integrity of the roof, including, without limitation, its leak proof capacity (other than ordinary wear and tear). Upon removal of the Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer. Should Seller fail to comply with any obligation to remove the Facility and restore the Project Site as required herein, Buyer shall be entitled to draw on the Removal Fund in order to fulfill Seller's removal and restoration obligations herein, and if any such funds are exhausted, Buyer may exercise any remedies it may have at law or equity against Seller for failure to comply with the terms herein.
- (b) The following sections shall survive termination or expiration of this Agreement:
 - (i) Obligations to pay by either Party that have accrued prior to termination or expiration
 - (ii) Indemnification obligations
 - (iii) Limitation of liability provisions
 - (iv) Obligations to remove the Generating Facility and remediate the Project Site
 - (v) Obligations (if any) to repair damage caused by either Party (13.27)
 - (vi) Obligations to retain records and provide access to same (13.28)
 - (vii) Restriction regarding use of Buyer's name for commercial purposes (13.34)
 - (viii) This provision, section 10.5.

10.6 Indemnification

To the fullest extent permitted by law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its permitted successors and assigns, and their elective or appointive board, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all claims, liability or losses, including but not limited to those losses arising from (i)

personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this Agreement, (iv) fines or penalties payable by the Indemnified Party, or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or, in the case of Seller, the design, construction, use, operation, maintenance, or removal of a Facility, or, in the case of Buyer, the existence at, on, above, below or near the Project Site of any Hazardous Substance, except as may arise solely from the negligence, willful misconduct or violation of law by the Indemnified Party, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

The Indemnifying Party shall defend any claims, liabilities, or lawsuits at its cost and expense. The Indemnifying Party shall defend the Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnified Party shall take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and no Indemnifying Party shall settle any such claims without the Indemnified Party's prior written consent, unless the settlement includes a full and unconditional release of claims against the Indemnified Party.

If Indemnifying Party refuses or fails to undertake or diligently prosecute such defense on behalf of Indemnified Party, Indemnified Party will have the right to provide its own defense, and Indemnifying Party will reimburse Indemnified Party for such expenditures, including reasonable attorney's fees and costs. Indemnifying Party's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Indemnified Party or any other person, except as may arise solely from the negligence or solely from the willful misconduct of the Indemnified Party, its officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act, inverse condemnation, or any other statutory or legal theory. All obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

To the extent that a portion of Seller's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section shall be subject to any applicable limitations mandated by Civil Code Section 2782.8.

Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided by

Seller to Buyer under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards against Buyer as a result of any such claim.

ARTICLE 11: REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Seller's Representations, Warranties and Covenants

Seller represents, warrants, and covenants to the Buyer that as of the date of the execution of this Agreement:

- (a) Seller is duly organized and validly existing as a California corporation, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;
- (c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (e) Seller will deliver to Buyer at the Delivery Point the Delivered Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.
- (f) Prior to conveyance to Buyer, Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and
- (g) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

11.2 Seller's Additional Representations, Warranties and Covenants

- (a) Seller warrants, represents and covenants that all of its operating and maintenance personnel shall be adequately qualified and trained throughout the term of this Agreement.

- (b) Seller shall operate and maintain the Generating Facilities in accordance with the terms of this Agreement and Prudent Industry Practices.
- (c) Seller covenants to repair the Project Sites to pre-installation conditions if such repairs are reasonably necessary as a direct result of Sellers' authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

11.3 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

- (a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part; and
- (b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Generating Facility to be installed and operated in accordance with all Requirements of Law.
- (d) Buyer represents that during the five (5) year period prior to the Effective Date, sufficient funds for the procurement of utility services have been appropriated by the City.

11.4 Buyer's Additional Representations, Warranties and Covenants

- (a) Buyer understands that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Buyer warrants, represents and covenants that it will not in any way cause and, where possible, shall not in any way permit any interference with a Facility's Insolation. If Buyer becomes aware of any activity or condition that could diminish the Insolation of a Facility, including acts of a third party unrelated to Buyer, Buyer shall notify Seller immediately and shall cooperate with Seller in preserving such Facility's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this

Section 11.4(a) against Buyer.

- (b) Buyer shall not initiate, conduct or permit activities on, in or about the Project Site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting a Facility.
- (c) The title to the Project Site is not impaired by any outstanding contract, covenant, interest, lien, or mortgage in conflict with this Agreement. If Seller needs additional licenses to access the Project Site not already provided under the Grant of Access Rights, then Customer has full authority to grant, and shall grant, such licenses to Seller.
- (d) Buyer has provided to Seller complete and accurate records and information of the physical condition of the Project Site, as available.

ARTICLE 12: ASSIGNMENT AND FINANCING

12.1 Collateral Assignment and Assignment to Financing Parties

Buyer acknowledges that Seller will be financing the acquisition, operation, and/or installation of a Facility or the Generating Facilities through a lessor, lender, or with financing accommodations from one or more financing institutions (each a "Financing Party"), and that Seller may assign, or in the case of a sale-leaseback transaction, sell and lease back, the Generating Facilities and/or may secure Seller's obligations to a Financing Party by a pledge or collateral assignment of this Agreement and a first security interest in the Generating Facilities (a "Collateral Assignment"). In order to facilitate a Collateral Assignment by Seller, and with respect to any Financing Party of which Seller has notified Buyer in writing, Buyer agrees to take any reasonable action and provide any documentation reasonably requested by Seller in connection with such a transaction, and agrees as follows:

- (a) Buyer consents to the collateral assignment by Seller to a Financing Party that has provided financing for a Facility or the Generating Facilities, of the Seller's right, title and interest in and to this Agreement.
- (b) Buyer will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Buyer under this Agreement, inclusive of a reasonable description of Seller default.

Any Collateral Assignment by Seller shall not release either Party of its obligations hereunder. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests and obligations under this Agreement, it shall do so in writing.

12.2 Assignment. Except as otherwise provided in Section Article 12.1 Seller shall not sell, transfer or assign the Seller's rights and obligations under this Agreement, or any interest in this Agreement (collectively, a "Full Assignment"), without the prior written consent of Buyer, provided, however, that, without the prior consent of Buyer, Seller may fully assign this Agreement to an Affiliate of Seller. For any assignment requiring Buyer's consent, Buyer has thirty (30) days to approve or deny Seller's written request for Full Assignment (unless the parties mutually agree in writing to a longer period). Upon the completion of a Full Assignment by Seller that follows the requirements of this Agreement, the term "Seller" shall mean the Assignment Assignee. Buyer's consent to any Full Assignment shall not be unreasonably withheld, conditioned or delayed if Buyer has been provided with proof to the Buyer's reasonable satisfaction that the proposed assignee (and subcontractor(s) with whom it has an active contract):

- (a) has experience in operating and maintaining fuel cell or solar PV systems, as applicable, greater than or equal to that of Seller; and
- (b) has the financial capability and credit rating equal to or greater than that of Seller; and
- (c) has the ability to maintain the Facility and provide the services provided pursuant to this Agreement in the manner required by this Agreement; and

(d) provides proof that it complies with the Removal Fund requirements of this Agreement.

Seller will not sell, lease, or otherwise convey its interest in the Facility to any Person unless it also makes a Full Assignment to such Person and such assignment is permitted by this Agreement. Assignments or transfers not permitted or in compliance with this section will be null and void. Any assignment by Seller without required prior written consent of Buyer shall not release Seller of its obligations hereunder.

12.3 Rights of Assignees Upon Event of Default.

In the case where a Seller has defaulted under its obligations under this Agreement, any Financing Party shall have the right but not the obligation to (a) cure such default on Seller's behalf, including the right to pay all sums due and to perform any other act, duty, or obligation required of Seller hereunder, or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement, or (b) assume the Seller's obligations under this Agreement within 45 days of the Seller's default. For avoidance of doubt, in the event that a Financing Party exercises its right contemplated in this section, such Financing Party shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under this Agreement, and thereafter shall become the Successor-in-Interest to Seller under this Agreement.

- (i) In the event that a Financing Party exercises its right to assume all of Seller's rights, interests, and obligations under this Agreement, it shall so assume in writing, and Seller shall have no further obligation to Buyer unless accrued up to that point and will provide notice to Buyer in writing.
- (ii) Nothing herein requires the Financing Party to cure any default of Seller under this Agreement (unless the Financing Party has succeeded to Seller's interests under this Agreement). Except as provided, Buyer has no obligation to deal with a Financing Party under this Agreement unless it has succeeded to Seller's right, title, and interest under this Agreement and become the Seller hereunder.
- (iii) A Successor-in-Interest shall cure any ongoing Seller Defaults promptly after becoming the Successor-in-Interest and no later than 90 days after becoming Successor-in-Interest. If the Successor-in-Interest does not cure all Seller Defaults, it will also be considered to be in default and Buyer shall have all rights afforded to Buyer against such Successor-in-Interest under this Agreement as in the case of a Seller Default.
- (iv) Buyer will not terminate this Agreement unless it has given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within the periods provided for in this Agreement. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and

continuously pursues cure of such default within such period, Buyer may agree to extend such period for cure for a reasonable period of time under the circumstances.

- (v) Buyer shall be relieved of its obligations under this Agreement during the period of time a Seller Default has occurred and is continuing and may exercise its termination rights (upon notification to Financing Party and expiration of the applicable cure periods) pursuant to this Agreement (including without limitation, invoking the use of the Removal Fund to have any facilities/equipment removed). If Buyer chooses not to exercise any available termination rights and when the Successor-in-Interest cures any and all Seller Defaults, the respective Buyer and Seller rights and obligations shall resume for the remainder of the Term. No partial or complete waiver of Buyer's rights shall be implied from Buyer's actions pursuant to this paragraph.

12.4 Payments and Notices

If a Collateral Assignee elects to become the Successor-in-Interest, it will be solely responsible for notifying the Seller and any other Collateral Assignees of this intention. The Buyer shall not be responsible for passing any notices, information and/or communications between the Seller and Collateral Assignees. If a Collateral Assignee does become a Successor-in-Interest, Buyer shall make all payments due under this Agreement to an account specified by such Collateral Assignee. For avoidance of doubt, upon the Collateral Assignee becoming the Successor-in-Interest the previous Seller shall not retain any of its rights or obligations under this Agreement and payments made by Buyer to the Successor-in-Interest shall satisfy Buyer's payment obligations under this Agreement.

Seller is solely responsible to provide contact information, including mailing addresses, email addresses and phone numbers for all Collateral Assignment assignees and Full Assignment assignees to Buyer. Buyer shall notify all Collateral Assignment assignees for which it has contact information within 15 days of a Seller Default. Seller shall be solely responsible for any instance where a Collateral Assignment assignee does not receive notice due to the Seller not providing contact information to Buyer.

Collateral Assignee Changes. Buyer acknowledges and agrees that Seller, subject to the terms and conditions of this Agreement may change one or more Collateral Assignment assignees. In the case that a Seller changes a Collateral Assignment assignee, Seller shall provide Buyer with any relevant, new contact information and payment directions as instructed by Seller. The terms and conditions of this Agreement, apply to any change in Financing Party by Seller.

Notwithstanding any language to the contrary, when any assignee chooses to exercise any rights against Buyer, it shall indemnify Buyer per the terms of this Agreement (and shall agree to do so in writing upon request by Buyer) for any claims arising from the exercise of such rights. By way of example and not limitation, such indemnification obligations shall extend to claims by other Financing Parties and Collateral Assignees asserted against Buyer. Any assignee's ability to exercise any rights against Buyer shall be contingent on the assignee's assumption of such indemnification obligations.

ARTICLE 13: OTHER TERMS & CONDITIONS

13.1 NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given three (3) days after being sent by registered or certified mail, return receipt requested; one (1) day after being sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

Buyer: As listed in Exhibit 3 of this Agreement

Seller: As listed in Exhibit 3 of this Agreement

Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

13.2 COMPLIANCE WITH ALL LAWS

The Parties shall at all times comply with all applicable laws, ordinances, rules and regulations. The Parties shall keep themselves fully informed of Buyer's charter, codes, ordinances and regulations and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. 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.

13.3 NO DEDICATION

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facility or any portion thereof to the public or to any portion thereof.

13.4 NON-WAIVER OF RIGHTS

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

13.5 HEADINGS

All titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

13.6 NO THIRD PARTY BENEFICIARY

Except as to Seller's Financing Parties referred to in Article 12 of this Agreement, including but not limited to Seller's Financing Parties, who are intended third party beneficiaries of this Agreement and the Grant of Access Rights, neither this Agreement nor the Grant of Access Rights shall not be construed to create rights in, or to grant remedies to, any third party.

13.7 FORWARD CONTRACT

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 GOVERNING LAW

This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California without regard to conflict of law principles.

13.9 VENUE

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the City of Sunnyvale or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, Sunnyvale, California.

13.10 NATURE OF RELATIONSHIP

- (a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.
- (b) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.

- (c) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.
- (d) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work only, and not as to the means by which such a result is obtained. Buyer does not retain the right to control the means or the method by which Seller performs work under this Agreement.

13.11 SUBCONTRACTING

Seller shall notify Buyer of its intent to use a subcontractor prior to such subcontractor's entry on the Project Site. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

13.12 GOOD FAITH & FAIR DEALING

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

13.13 SEVERABILITY

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

13.14 COUNTERPARTS

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.

13.15 COOPERATION

The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

13.16 NECESSARY ACTS AND FURTHER ASSURANCES

The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. Buyer shall provide Seller estoppels certificates confirming the status of this Agreement and acknowledging that Buyer has no rights in the Generating Facility. Buyer shall obtain, and pay any costs to obtain, all consents required for Buyer to enter into and perform its obligations under this Agreement from Buyer's lenders, landlords and tenants, if any, and those of any other persons with interests in Buyer's real property upon which Seller's personal property is located. These consents shall include estoppels certificates which recognize the rights of Seller, Seller's Financing Parties, and Seller and Seller's Financing Parties' assignees and successors under this Agreement.

13.17 CONSTRUCTION

The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

13.18 ENTIRE AGREEMENT, INTEGRATION/MERGER CLAUSE

This Agreement, together with all Exhibits and schedules attached hereto, constitute the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

13.19 NON-DISCRIMINATION

Seller shall comply with all applicable Federal, State, and local laws and regulations including Buyer's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff,

rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

13.20 NON-EXCLUSIVE CONTRACT

This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

13.21 MODIFICATION

This Agreement may be supplemented, amended, or modified only by the mutual written agreement of the Parties.

13.22 HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Seller must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

13.23 DISENTANGLEMENT

Seller shall cooperate with Buyer and Buyer's other Sellers to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data related to Buyer, including, but not limited to, the Buyer Data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

13.24 ACCOUNTABILITY

Seller will be the primary point of contact and assume the responsibility of all matters relating to this Agreement, including those involving the manufacturer and/or deliverer and/or any

subcontractor, as well as payment issues. If issues arise, the Seller must take immediate action to correct or resolve the issues.

13.25 CONFLICT OF INTEREST

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

13.26 DAMAGE AND REPAIR

Any and all damages to a Party's property caused by the other Party's negligence or operations shall be repaired, replaced or reimbursed by such Party at no charge to the other Party. Repairs and replacements shall be completed within seventy-two (72) hours of the incident, unless the Parties agree to an extension or another time frame, or if such repairs or replacements cannot be completed within such timeframe, then upon notification by the repairing Party then the Parties shall mutually agree on an alternative timeframe to complete such repair or replacement. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from a Party's vehicles or during performance shall be responsibility of such Party. All materials must be cleaned up in a manner and time reasonably acceptable to Buyer (i.e., as soon and as thoroughly as possible to prevent potential as well as actual environmental damage). As soon as practicable, Seller shall report each incident to the Buyer, City of Sunnyvale. Damage observed by either Party, whether or not resulting from such Party's operations or negligence shall be promptly reported to the other Party.

Additionally, if at any time during the Term a Generating Facility is so severely damaged by fire or other casualty that substantial alteration, reconstruction or restoration is required, then Seller shall have the right, but not the obligation, to reconstruct or restore the Generating Facility and if Seller elects to do so then the Agreement shall remain in full force and effect, without change, for the remainder of the Term and the Expected Annual Contract Quantity shall be adjusted to reflect the period required for the substantial alteration, reconstruction, or restoration of the Generating Facility. If Seller fails to provide notice of its intention to reconstruct or restore the Facility within ninety (90) days of any such casualty, this Agreement shall terminate with respect to such Generating Facility and Seller shall remove the Generating Facility from the Site.

13.27 COOPERATION WITH REVIEW

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits. The

Seller shall pay to Buyer the full amount of any audit determined to be due as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

13.28 AUDIT RIGHTS UNDER STATE LAW

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

13.29 DEBARMENT

Seller represents and warrants that it, its employees, subcontractors and agents are not suspended, debarred, or excluded from, or ineligible from, receiving Federal or state funds. Seller must within 30 calendar days advise the Buyer if, during the term of this Agreement, the Seller becomes suspended, debarred or excluded from or ineligible for, receiving Federal or state funds.

13.30 CALIFORNIA PUBLIC RECORDS ACT

The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller's proprietary information is contained in documents or information submitted to Buyer, 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 Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer's deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

13.31 DEBT LIABILITY DISCLAIMER

The Buyer, including, but not limited to, any source of funding for Buyer, any general fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. Buyer is not be liable for and shall be held harmless and indemnified by Seller for any claims or damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller. Buyer and its agencies and divisions, has no obligation to defend or undertake the

defense on behalf of the Seller or its heirs, successors or assigns.

13.32 USE OF BUYER'S NAME FOR COMMERCIAL PURPOSES

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer.

13.33 PAYMENT OF PREVAILING WAGES

The Seller and all subcontractors under the Seller shall pay all workers on all work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the City of Sunnyvale pursuant to sections 1770 et seq. of the California Labor Code.

13.34 ACCOUNT MANAGER

Seller must assign an account manager to Buyer to facilitate the contractual relationship, be fully responsible and accountable for fulfilling Buyer's requirements. Seller represents and warrants that such person will ensure that Buyer receives adequate support, problem resolution assistance and required information on a timely basis.

13.35 Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law or choice of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

Exhibit 1

License Agreement

This License Agreement (this “**Agreement**”), dated as of _____, 2019 (the “**Effective Date**”), is by and between _____, a Delaware limited liability company (“**Seller**”), and the City of Sunnyvale, a Municipal Corporation (“**Buyer**”). Capitalized terms not otherwise defined herein shall have the definitions attributed to them in that certain Power Purchase Agreement, dated _____, 2019, between Seller and Buyer (the “**PPA**”). Buyer and Seller are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

WITNESSETH

WHEREAS, Buyer owns the real property commonly known as SMaRT Station and Corporation Yard, Sunnyvale, California and more particularly described in **Appendix A** attached hereto (collectively, the “**Property**”);

WHEREAS, Seller wishes to license a portion of the Property more particularly described in **Appendix B** (the “**Site**”) for the purpose of constructing, installing, owning, operating and maintaining a solar photovoltaic system and transmitting the electricity therefrom (the “**System**”) as more particularly described in the PPA and grant general access rights over the Property to Seller for the purpose of accessing the Site; and

WHEREAS, Buyer desires to license the Site and grant access rights to the Site over the Property to Seller as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Seller and Buyer hereby agree as follows:

1. **License.** Buyer hereby licenses to Seller and Seller hereby licenses from Buyer, in accordance with the terms and conditions hereinafter set forth, the Site for the purpose of Seller constructing, installing, owning, operating, and maintaining the System and transmitting the electricity together with access on, over, under and through the Property to access the Site (the “**License**”). The License and the use hereunder by Seller shall not interfere or permit interference with Buyer's use of its Site for its operational purposes. Seller shall repair any damage to the Site and any facilities, equipment, persons or property located in or adjacent to the Site caused by Seller or its agents. This License is subordinate to all prior rights and obligations of City of Sunnyvale in the Site, and Buyer shall grant no rights inconsistent with the reasonable exercise by the Seller of its rights under this License.

2. **Solar Easement and Utility Easement.** Buyer further grants and conveys to Seller a solar easement for the open and unobstructed access to the sun and to ensure adequate exposure of the System to the sun (the “**Solar Easement**”). In the event that a utility provider requires an easement in connection with Seller's use of the Site, Buyer shall grant such necessary easement to the utility provider, provided that such easement is in a commercially reasonable and recordable form

3. **Benefits.** Seller shall pay Buyer one U.S. dollar (\$1.00) on the Effective Date as consideration for this Agreement.

4. **System Construction, Installation, Operation, and Ownership.**

(a) Buyer hereby consents to the design, construction, installation, operation, maintenance, repair, and periodic alteration, replacement, and removal of the System on the Site, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment, poles and wires and transmission equipment, and utility interconnections.

(b) Buyer acknowledges and agrees that Seller is the exclusive owner and operator of the System and that all equipment comprising the System shall remain the personal property of the Seller and shall not become fixtures, notwithstanding the manner in which the System is or may be affixed to any real property of Buyer. Buyer shall have no right, title or interest in the System or any component thereof, notwithstanding that the System may be physically mounted or adhered to the Site. If Buyer is the fee owner of the Property, Buyer consents to the filing by Seller, on behalf of Buyer, of a disclaimer of the System as a fixture of the Property in the office where real estate records are customarily filed in the jurisdiction of the Property. If Buyer is not the fee owner, Buyer will, at Seller's request, use commercially reasonable efforts to obtain such consent from such owner.

(c) Seller hereby grants the following license rights to Buyer for the Term (i) a non-exclusive right and license to install, locate, repair, replace and remove light fixtures on the underside of the solar canopy for the purpose of lighting the parking area; (ii) a license to park automobiles under the solar canopy and maintain those portions of the parking facility located under the solar canopy, for the Term, provided that such parking spaces and the plan of automobile access to and from such spaces are consistent with the site plan attached as Schedule 2 to the PPA; (iii) Seller shall not use or permit the use of the Site for any purpose other than constructing, installing, operating, updating, and maintaining a parking facility. In the event damage to any part of the System or the parking facility is suffered as a result of the actions of Grantor or Grantee, or their respective employees, agents, contractors, permittees, licensees, or guests, the Grantor or Grantee, as the case may be, shall promptly reimburse the other Party for any reasonable out-of-pocket costs of such repairs required to be performed by that Party.

(d) Buyer and Seller understand and acknowledge that pursuant to the terms of the PPA, Buyer shall provide certain specified utilities to the Site in connection with Seller's construction, start-up, maintenance, repair, replacement and operation of the System. In connection therewith, Seller's use of the Site shall include the non-exclusive right to the use of water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, and drainage ditches, if available. Exercise of Seller's license to utilize these utilities as set forth herein and in the PPA shall be subject to Buyer's prior written approval which may be withheld should Buyer, in its sole discretion, determine that the proposed use will interfere or otherwise adversely impact Buyer systems, operations or activities. Buyer shall maintain and repair all utilities up to the delivery points identified in the PPA, and Seller will have the obligation to maintain and repair all utilities, including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided, from said delivery points to and then within the Site.

(e) Without in any way limiting Seller's responsibility to provide adequate security as set forth in the PPA, Seller hereby agrees to abide by any and all Buyer security measures and procedures currently in place at or adjacent to the Site. Seller agrees to repair to the current standards all roads, driveways and walkways damaged by Seller equipment or deliveries that are now and may be located in and around the Site necessary for proper ingress and egress to and from, and occupancy of, the Site. Seller will observe all speed limits and other rules and regulations established by Buyer with respect to such roads and driveways. Seller shall comply with all safety requirements specified in any applicable safety program established by Buyer as well as any required by state, federal or local laws and ordinances.

(f) Except in the event of an emergency, Seller agrees to give Buyer fifteen (15) days prior written notice of its maintenance activities to coordinate and schedule such activities so as to avoid interference, impact or conflict with Buyer's use of the Site or areas adjacent to or proximate to the Site. Such Seller activities shall be for the purpose of installation, operation, and maintenance of the applicable Facility or Generating Facilities, on, over, under and across the Site during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the applicable System or the Site. In case of imminent risk, Seller shall make commercially-reasonable attempts to promptly notify Buyer of need for immediate access to the Site, with such communication made to Buyer's designated emergency contact below. Notwithstanding the security measures Buyer maintains around the Site and adjacent to the Site, Seller shall be solely responsible for undertaking reasonable security measures to ensure and maintain the security of the System and the Site, which includes, but is not limited to, the security of the wiring and the inverters. As such, Seller shall bear the sole cost and responsibility of replacing any equipment or other property stolen from or otherwise damaged at the Site, whether owned by Buyer or Seller, due to Seller's failure to provide reasonable security measures except if such damage is the result of Buyer's negligence or willful misconduct. Seller shall contact Buyer's designated contact person as described below to coordinate operation and maintenance activities on the Site. Buyer shall provide Seller with at least seven (7) calendar days written notice of any Buyer activities proximate to the System.

SMaRT Station

Environmental Engineering Coordinator, ESD
408-730-7791 (Direct)
408-730-7262 (Answer Point)

Corporation Yard

Water & Sewer Systems Division Manager, ESD
408-730-7578 (Direct)
408-730-7900 (Answer Point)

5. Representations and Warranties, Covenants of Buyer.

(a) Buyer represents, warrants and covenants that Buyer has lawful title to the Property and, subject to the approval of the fee owner, if any, full right to enter into this Agreement.

(b) Buyer represents, warrants and covenants that Buyer (i) has been duly authorized to enter into this Agreement by all necessary action, and (ii) subject to the approval of the fee owner, if any, will not be in default under any agreement to which it is a party as a result of entering into this Agreement.

(c) Buyer represents, warrants and covenants that it shall not permit any lien, claim, right or other encumbrance to attach to the System and agrees to discharge any lien, claim, encumbrance or interest that attaches to the System (other than liens, claims, encumbrances or interest placed on the System by Seller or Seller's creditors).

(d) Buyer represents, warrants and covenants that Seller shall have quiet and peaceful possession of the Site free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Seller's quiet enjoyment thereof, throughout the Term.

(e) Buyer represents and warrants that, as of the Effective Date; (i) the Site shall be free of any Hazardous Materials or any other substance or matter imposing liability for cleanup costs or expenses on any person or entity under any statutory or common law theory; (ii) there are no outstanding

claims and Buyer has not received any notice of any violations by any governmental authority with respect to the Site alleging a violation of applicable law and the Site is in compliance with all applicable laws and Environmental Law; (iii) the Property on which the SMaRT Station is located contains municipal solid waste as disclosed in the Covenant to Restrict Use of Property, Sunnyvale Municipal Landfill, dated May 10, 1995 and recorded in the Official Records of Santa Clara County in Book N872, Page 1734, Recording No. 12907350; (iv) Buyer has provided the California Regional Water Quality Control Board with thirty (30) days advance notice of this Agreement.

6. Term. The term of this Agreement shall commence on the Effective Date and terminate on the date that is twenty-five (25) years after the Commercial Operation Date (the “**Initial Term**”). This Agreement may be renewed for successive terms of five (5) years each pursuant to Section 2.1 of the PPA (collectively with the Initial Term, the “**Term**”); provided however, that the Initial Term plus all extensions to the Term, if any, shall not exceed an aggregate term of thirty-five (35) years. After termination of this Agreement, Buyer grants Seller a license to enter the Site for one hundred eighty (180) days to remove the System. This Agreement shall terminate if the PPA expires or is terminated prior to the expiration of the Term.

7. Cooperation. Buyer shall cooperate with Seller’s requests to assist Seller in obtaining any necessary agreements, permits, approvals, including any zoning, land use, environmental, building and other permits required to construct, install, operate and maintain the System and any leases and approvals from the utility necessary in order to interconnect the System to the electrical system and/or the utility’s electric distribution system. Buyer shall obtain a non-disturbance agreement (“**NDA**”) in favor of Seller from any third party who now has or may in the future obtain an interest in the Property or Site, including, without limitation, lenders to Buyer, in a form reasonably acceptable to Seller.

8. Maintenance of Site. Buyer shall, at all times at Buyer’s sole cost and expense, maintain the Site and all access areas. In the case of rooftop and canopy Systems, Buyer shall, at all times at Buyer’s sole cost and expense, maintain the Site in a manner sufficient to structurally support the System. All maintenance and repairs shall be carried out in a manner that minimizes the impact on the System. All maintenance and repairs shall be carried out in a manner that minimizes the impact on the System.

9. Seller’s Ownership of Systems and Output. The Systems are personal property, whether or not the same is deemed real or personal property under Applicable Law, and shall not attach to or be deemed a part of, or a fixture to, the Site or Property. Seller or its designees shall be the legal and beneficial owners of the applicable Systems at all times and Buyer shall have no right, title or interest in any of the Systems or any component thereof, notwithstanding that any such Systems may be physically mounted or adhered to the Site or Property. Buyer covenants that it will use commercially reasonable efforts to place all parties having an interest in or lien upon the Property or the Site 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 Property or Site which could reasonably be construed as attaching to the Systems as a fixture of the Property or Site, Buyer shall provide a disclaimer or release from such lien holder in form and substance reasonably satisfactory to Seller and any Financing Party. Buyer, as the fee owner of the Property, consents to the filing by Seller, on behalf of Buyer or its designees, as applicable, of a disclaimer of the Systems as a fixture of the Property or Site in the office where real estate records are customarily filed in the jurisdiction of the Property. Further, Buyer acknowledges and agrees that Seller or its designees, as applicable, are the exclusive owners of all electricity and Existing Financial Incentives. Seller acknowledges that Buyer or its designees, as applicable, are the exclusive owners of all utility credits generated by the System and owners of all Environmental Attributes attributable to the System.

10. Events of Default, Remedies.

(a) The following events shall be defaults with respect to Buyer (each, a “**Buyer Event of Default**”):

(i) Buyer breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Seller’s notice of such breach and Buyer fails to so cure, or (B) Buyer otherwise fails to commence within such thirty (30) day period and diligently pursue and complete within ninety (90) days said cure, if a longer cure period is needed; and

(ii) Buyer fails to pay Seller any undisputed amount due Seller under this Agreement within thirty (30) days from receipt of written notice from Seller of such past due amount; and

(iii) A condemning authority takes all, or a portion, of the Site which in Seller’s opinion is sufficient to render the Site unsuitable for Seller’s use.

If a Buyer Event of Default has occurred and is continuing, in addition to other remedies that may be expressly provided herein, Seller may terminate this Agreement and pursue all available remedies at law or in equity.

(b) The following events shall be defaults with respect to Seller (each, a “**Seller Event of Default**”):

(i) Seller breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Seller’s written notice of such breach and Buyer fails to so cure, or (B) Buyer otherwise fails to commence within such thirty (30) day period and diligently pursue and complete within ninety (90) days said cure, if a longer cure period is needed; and

(ii) Seller fails to pay Buyer any undisputed amount due Buyer under this Agreement within thirty (30) days from receipt of written notice from Buyer of such past due amount.

If a Seller Event of Default has occurred and is continuing, in addition to other remedies that may be expressly provided herein, Buyer may terminate this Agreement.

11. Hazardous Substances. Neither Party shall introduce or use any Hazardous Substances on, in or under the Site or Property in violation of any Applicable Law. If a Party becomes aware of any Hazardous Substances on, in, or under the Site or Property, it shall promptly notify the other Party of the type and location of such Hazardous Substances in writing. Each Party agrees to indemnify, defend and hold harmless the other Party and its Affiliates and their employees and agents from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that any Party may suffer or incur due to the existence of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (“**Environmental Claims**”), that relate to or arise from such Party’s activities on the Property or Site, except to the extent directly attributable to the negligent acts or omissions or willful misconduct of the other Party. Buyer shall further indemnify, defend and hold harmless Seller and its Affiliates and their employees and agents from and against any and all Environmental Claims due to the presence of any Hazardous Substances in, on or under the Site as of the Effective Date, including but not limited to any claims arising from the fact that the SMaRT Station Property contains municipal solid waste. The indemnifications in this Section 0 specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Governmental Authority. Buyer shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Applicable Law, all spills or other releases of any Hazardous Substances to the extent not caused by Seller,

that have occurred or which may occur on the Property. The Parties agree to execute **Appendix C** attached hereto concurrently with the execution of this Agreement. This Section 11 shall survive the termination or expiration of this Agreement.

12. Liability and Indemnity.

(a) Each Party as indemnitor shall indemnify, defend, and hold harmless the other Party and its Affiliates and their employees and agents against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including reasonable attorneys' fees) asserted by third parties for injury or death to Persons (including employees of either Party) and/or physical damage to property arising out of or in connection with the negligent acts or omissions or willful misconduct of the indemnitor or a material breach of any obligation, representation or warranty of the indemnitor under this Agreement, except to the extent caused by the negligent acts or omissions or willful misconduct of the indemnified party.

(b) Seller shall not be responsible to Buyer or any third party, for any claims, costs or damages, including fines or penalties, attributable to any violations of Applicable Laws existing prior to the Effective Date, or by any party other than the Seller Parties.

(c) No termination of this License shall release the Seller from any liability or obligations hereunder resulting from any acts, omissions, or events happening prior to the termination of this License and restoration of the Site as required under the PPA.

(d) This Section 12 shall survive the termination or expiration of this Agreement.

13. Assignment. Neither party shall have the right to assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, that Seller may in its sole discretion and without the consent of Buyer assign any of its rights, duties or obligations under this Agreement to (i) one or more of its Affiliates, (ii) to a Financing Party, (iii) collaterally assign or pledge its interest hereunder in connection with any financing of the System, or (iv) any person succeeding to all or substantially all of the assets of Seller, (any of the foregoing being a "***Permitted Transfer***"). An assignment by either Party in accordance with this Section 10 shall, provided that assignee assumes the assignor's obligations under this Agreement, relieve the assignor of its obligations hereunder, except with respect to undisputed payments due by the assignor as of the effective date of the assignment, which obligations shall be performed by assignor or assignee as a condition precedent to such assignment. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns.

14. Condemnation. If at any time during the Term, any part of the Site or System is taken for any public or quasi-public use under Applicable Law, ordinance of or regulation by a Governmental Authority by condemnation or right of eminent domain, then each Party shall be entitled to separately pursue an award for its respective property interest appropriated as well as any damages suffered thereby, and each Party hereby waives any right to any award that may be prosecuted by the other Party.

15. Casualty/System Loss.

(a) In the event the Site or access thereto shall be so damaged or destroyed by fire or other casualty so as to make the use of the Site impractical, as determined by Seller in its sole and absolute discretion, then Seller may elect to terminate this Agreement by providing notice to Buyer of such termination within ninety (90) days of Seller's knowledge of the damage or destruction, which termination will be effective as of a date of such damage or destruction. If Seller does not elect to terminate this Agreement pursuant to the previous sentences, Buyer shall exercise commercially reasonable efforts to repair the damage to the Site and return the site to its condition prior to such damage or destruction;

provided, however, that, except as otherwise provided in this Agreement, Buyer shall in no event be required to repair, replace or restore any property of Seller comprising part of the Systems, which replacement or restoration shall be Seller's responsibility.

(b) In the event of any harm to the System that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the System ("**System Loss**"), Seller shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Buyer whether Seller is willing, notwithstanding such System Loss, to repair or replace the System and to continue this Agreement. In the event that Seller notifies Buyer that Seller is not willing to repair or replace the System, Seller may terminate this Agreement effective upon the date of such System Loss, and Seller shall be entitled to all proceeds of its insurance policies with respect to the System Loss.

16. Incorporation of PPA Terms. Buyer acknowledges the terms of the PPA, Section 4.9 (Title to the Facilities) 5.2 (Allocation of Taxes and Possessory Interest Tax), 10.5(a) (Removal and Restoration), 11.4(a) (Insolation), 7.7 (Insurance), 12.1 (Collateral Assignment and Assignment to Financing Parties), 12.3 (Rights of Assignees Upon Event of Default) and 13.30 (California Public Records Act) are hereby incorporated by reference and are made a part hereof as if set forth herein at length, and with respect to Section 11.4, this Agreement being substituted for "this Agreement".

17. Amendments. This Agreement may be amended only in writing signed by Seller and Buyer or their respective successors in interest or permitted assigns.

18. Notices. All notices and communications concerning this Agreement shall be in writing and shall be delivered as provided in the PPA Section 13.1.

19. Further Assurances. Upon the receipt of a request from the other Party or a Financing Party, each Party shall execute such commercially reasonable additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof, including at the requesting Party's expense, entering into any consents, assignments, affidavits, estoppels and other documents as may be reasonably required by such Party's lender to create, perfect or preserve its collateral interest in such Party's property or such party's rights and obligations under this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

20. Waiver. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

21. Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

22. Entire Agreement. This Agreement contains all the agreements of the Parties regarding right of entry for construction, maintenance and operation of the System and supersedes any prior License or negotiations. There have been no representations by the Seller or understandings made between the Seller and the Buyer regarding right of entry for construction, maintenance and operation of the System other than those set forth in this Agreement. This Agreement may not be modified except by a written instrument duly executed by the Parties.

23. Choice of Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without reference to any choice of law principles.

24. Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

25. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or .pdf signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the parties.

26. Further Assurances. Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Agreement.

27. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN ANY COURT IN ANY JURISDICTION BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT.

28. Compliance With Laws. Seller shall not use the Site or any part thereof or suffer or permit Seller's agents or contractors to do anything in or about the Site in conflict with any applicable law, statute, zoning restriction, ordinance, or governmental law, code, rule or regulation affecting (a) the condition, use or occupancy of the Site or (b) the construction, installation, ownership, operation or maintenance of the System. Seller shall not commit any public or private nuisance or any other act or practice which would materially disturb the quiet enjoyment of any occupant of nearby properties.

29. Conflicts. To the extent any conflicts exist between this Agreement and the PPA, the terms of the PPA shall control.

30. Recording. Buyer hereby consents to the recording of a Memorandum of License, at Seller's sole cost, in substantially the form of **Appendix D** attached hereto.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF intending to be legally bound hereby, the parties have executed this Agreement as of the Effective Date.

BUYER:

CITY OF SUNNYVALE,
a Municipal Corporation

By: _____

Name:

Title: City Manager

SELLER:

_____,
a Delaware limited liability company

By: 1115 Solar Development, LLC,
its sole member and manager

By: _____

Name:

Title:

APPENDIX A
PROPERTY LEGAL DESCRIPTION

APPENDIX B
SITE LEGAL DESCRIPTION

APPENDIX C

MUNICIPAL LANDFILL DISCLOSURE

WHEREAS, City of Sunnyvale owns the real property commonly known as Santa Clara County Assessor's Parcel Number 110-03-001 in Sunnyvale, California (the "**Property**"). A municipal landfill exists on the Property which contains municipal solid waste (the "**Landfill**").

WHEREAS, _____, a Delaware limited liability has entered into a license to occupy a portion of the Property known as the SMaRT Station (the "**Site**") for the purpose of constructing, installing, owning, operating and maintaining a solar photovoltaic system and transmitting the electricity therefrom (the "**System**").

WHEREAS, the Property contains restrictions due the location of the Landfill on the Property. The SMaRT station is located on the Property adjacent to the Landfill.

WHEREAS, the parties are entering into this Municipal Landfill Disclosure in compliance with the Covenant to Restrict Use of Property, Sunnyvale Municipal Landfill dated May 10, 1995 and recorded in the Official Records of Santa Clara County in Book N872, Page 1734, Recording No. 12907350.

The parties hereby acknowledge the following:

The land [Property] described herein contains municipal solid waste. Such condition may render the land and the owner, lessee, or other possessor of the land subject to requirements of covenant restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code and Division 7 of the California Water Code. This statement is not a declaration that a hazard exists.

CITY OF SUNNYVALE,
a Municipal Corporation

By: _____
Name:
Title: City Manager

_____,
a Delaware limited liability company

By: 1115 Solar Development, LLC,
its sole member and manager

By: _____
Name:
Title:

APPENDIX D
FORM OF MEMORANDUM OF LICENSE
[see attached]

**Recording Requested by and
after recording return to:**

_____, LLC
c/o Borrego Solar Systems, Inc.
1814 Franklin Street, Suite 700
Oakland, CA 96412
Attn: Legal Department

No transfer tax due. Term of License is less than 35 years.

MEMORANDUM OF LICENSE AGREEMENT

THIS MEMORANDUM OF LICENSE AGREEMENT (the “*Memorandum*”), is made as of _____, 20____, by and between CITY OF SUNNYVALE, a Municipal Corporation with its principal place of business at _____, Sunnyvale, California _____ (“*Buyer*”) and _____, a Delaware limited liability company with its principal place of business located at 1814 Franklin Street, Suite 700, Oakland, California 94612 (“*Seller*”).

RECITALS

A. Buyer is the owner of the real property located in Santa Clara County, California, more particularly described in **Schedule A** attached hereto (the “*Property*”).

B. Buyer and Seller are parties to that certain License Agreement (the “*License*”) dated as of _____ (the “*Effective Date*”). Pursuant to the License, Buyer has licensed a portion of the Property (the “*Site*”) as more particularly described in **Schedule B** attached hereto and Buyer has granted general access rights over the Property to Seller.

AGREEMENT

1. Buyer licenses to Seller and Seller licenses from Buyer, for the Term (as defined below), the Site in accordance with the terms and provisions of the License.

2. Buyer grants to Seller for the Term, access rights for ingress and egress on, over, under and through the Property for access to the System and to construct, use and maintain the System, including electric lines and poles and all necessary appurtenances thereto in accordance with the terms and provisions of the License.

3. The term of the License (the “*Term*”) commenced on the Effective Date and terminates on the date that is twenty-five years after the Commercial Operation Date. The Term can be extended for successive terms of five (5) years each, but in no event shall the Term exceed thirty-five (35) years.

4. All of the terms, covenants and conditions of the License are incorporated herein and made a part hereof. The purpose of this Memorandum is to give notice of the existence of the license created by the License; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the License as it may be amended.

5. As set forth more fully in the License, (a) Buyer shall not interfere with the insolation of solar energy over the System and has granted to Seller a solar easement, and (b) the System shall remain the personal property of Seller and shall not attach to, or be deemed a part of, or fixture to, the Property.

6. This Memorandum shall be governed by the laws of the State of California.

7. The parties agree that this Memorandum may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have duly executed this Memorandum as of the date first above written.

BUYER:

CITY OF SUNNYVALE

By: _____

Name:

Title:

SELLER:

By: 1115 Solar Development, LLC,
its sole member and manager

By: _____

Name:

Title:

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 _____

County of _____

On _____, _____ before me _____, Notary Public personally appeared _____

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

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

WITNESS my hand and official seal.

Notary Public

(seal)

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 _____

County of _____

On _____, _____ before me _____, Notary Public personally appeared _____

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

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

WITNESS my hand and official seal.

Notary Public

(seal)

SCHEDULE A
to
MEMORANDUM OF LICENSE

PROPERTY LEGAL DESCRIPTION

SCHEDULE B
to
MEMORANDUM OF LICENSE

SITE LEGAL DESCRIPTION

Exhibit 2**Early Termination Fee**

The Early Termination Fee with respect to each Facility under this Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Early Termination Fee (\$/Wdc including costs of removal)
1	\$1,998,928
2	\$1,893,786
3	\$1,786,263
4	\$1,676,149
5	\$1,563,219
6	\$1,498,449
7	\$1,481,579
8	\$1,461,111
9	\$1,436,743
10	\$1,408,155
11	\$1,375,001
12	\$1,336,911
13	\$1,293,486
14	\$1,244,301
15	\$1,188,898
16	\$1,126,787
17	\$1,057,443
18	\$980,301
19	\$894,757
20	\$800,164
21	\$695,827
22	\$581,003
23	\$454,893
24	\$316,644
25	\$165,340

Exhibit 3

Notice Information

Buyer:

City of Sunnyvale

650 W. Olive Ave

Sunnyvale, CA 94089

Seller:

Borrego Solar Systems, Inc.

1814 Franklin Street, Floor 7

Oakland, CA 94612

Financing Party:

BG Capital

Exhibit 4**Contract Price**

The kWh Rate with respect to the Generating Facility under this Agreement shall be in accordance with the following schedule(s). Annual escalation rate of 2.5%.

City of Sunnyvale Corporation Yard and SMaRT Station:

Year of System	kWh Rate[*] (\$/kWh)	Year of System	\$/kWh Rate[*] (\$/kWh)
1	\$0.1262	14	\$0.1740
2	\$0.1294	15	\$0.1783
3	\$0.1326	16	\$0.1828
4	\$0.1359	17	\$0.1873
5	\$0.1393	18	\$0.1920
6	\$0.1428	19	\$0.1968
7	\$0.1464	20	\$0.2017
8	\$0.1500	21	\$0.2068
9	\$0.1538	22	\$0.2120
10	\$0.1576	23	\$0.2173
11	\$0.1615	24	\$0.2227
12	\$0.1656	25	\$0.2283
13	\$0.1697		

[*Calculated based on the year 1 kWh Rate multiplied by 2.5% inflation factor each year.]
 Expected Annual Contract Quantity commencing on the Actual Commercial Operation Date with respect to each Facility under this Agreement shall be as follows:

Exhibit 5**Expected Annual Contract Quantity**

Expected Annual Contract Quantity commencing on the Actual Commercial Operation Date with respect to each Facility under this Agreement shall be as follows:

SMaRT Station:

Year 1 Expected Annual Contract Quantity

1 767,400

2 763,563

3 759,745

4 755,946

5 752,167

6 748,406

7 744,664

8 740,941

9 737,236

10 733,550

11 729,882

12 726,233

13 722,601

14 718,988

15 715,393

16 711,816

17 708,257

18	704,716
19	701,192
20	697,687
21	694,198
22	690,727
23	687,273
24	683,837
25	680,418

Corporation Yard:

Year 1 Expected Annual Contract Quantity

1	249,600
2	248,352
3	247,110
4	245,875
5	244,645
6	243,422
7	242,205
8	240,994
9	239,789
10	238,590
11	237,397

12	236,210
13	235,029
14	233,854
15	232,685
16	231,521
17	230,364
18	229,212
19	228,066
20	226,925
21	225,791
22	224,662
23	223,539
24	222,421
25	221,309

NOTE: The parties agree that after System design is finalized, the Expected Annual Contract Quantity for each separate facility shall be updated and, if necessary, this Exhibit 5 shall be amended to reflect the revised estimated annual amounts.

October 2017

SUN01: Corporation Yard**Site Overview**

Site Address: 221 Commercial Street, Sunnyvale, CA 94085

Utility Information

Provider: PG&E
 Current Rate Schedule: A-1 TOU (Meter 1)
 A-10 S TOU (Meter 2)
 Annual Energy Usage: 383,158 kWh
 (Meter 1: 62,810 kWh;
 Meter 2: 320,348 kWh)

**Solar PV Potential**

Type of PV System: Carport / Shade Structure
 Maximum System Size: 201 kW-DC
 Maximum System Output: 309,588 kWh
 Recommended System Size: 201 kW-DC
 Recommended System Output: 309,588 kWh
 Energy Offset: 81% (both meters, through Aggregated Net Metering)

Issues: Large vehicle height requirements; shade from tower; long electrical run

Opportunities: High energy offset of multiple meters; NEMA; parking shade structure

The Sunnyvale Corporation Yard is a large campus composed of an Administration building, constructed primarily in the 1970s, and multiple accessory buildings and shade structures. The City prefers to focus solar development on material storage (Section 1) and parking structures (Sections 2 and 3), rather than on rooftops due to upcoming building reconstruction studies. The identified usable areas for PV installation at this site are shown in the image below, marked by blue rectangles. The white boxes indicate the locations of the main electrical room at this site, which is where Meter 2 (the expected PV interconnection point) is located.

October 2017



In total, three usable sections were identified at this site. Section 1 is an area where City equipment and bulk materials are stored. Any new structure in this section would need to be rain-proof on the top level, with gutters and downspouts, and would be required to be 14-feet high at the minimum. Either a double-cantilever or a four-post structure could be designed for this area. Section 1 is subject to winter shading from an approximately 90-foot-tall communications tower to the south (see the shadow north east of Section 2 in image above). Sections 2 and 3 are in secured employee parking areas. Access will be coordinated.

Utilizing all three sections, this site has enough space to host a 201 kW-DC solar PV system that would produce approximately 309,600 kWh annually. The table below shows more detail about each section.

Section	Azimuth	Area (Sq. Ft.)	Size (kW DC)
1	280°	7,082	92
2	183°	1,984	27
3	183°	6,039	83
Total		15,105	201
Total System Production (kWh)			309,588
Recommended System size (kW)			201
Recommended System Output (kWh)			309,588

The meter location indicated on the preceding page is for Meter 2, the primary usage meter at the Corporation Yard. The Corporation Yard also hosts a second meter located elsewhere on the site. The City's desire is to use Aggregated Net Metering (NEMA) to offset energy usage at both electrical meters through a single PV system interconnected at Meter 2.

October 2017

Electrical Information

The voltage rating at the Meter 2 switchgear is single-phase, 120/240-V, and the rating of the switchgear is 600-Amp with a 400-Amp main breaker. There is no room within the electrical room for additional electrical equipment, but substantial space is available in nearby areas.

Staging Information

No additional staging areas will be provided other than the locations shown for solar installation. Area 1 may not be completely clear of material for carport installation.

SUN03: SMaRT Station**Site Overview**

Site Address: 301 Carl Road, Sunnyvale, CA 94089

Utility Information

Provider:	PG&E
Current Rate Schedule:	E-19S
Annual Energy Usage:	1,605,227 kWh

**Solar PV Potential**

Type of PV System:	Rooftop
Maximum System Size:	502 kW-DC
Maximum System Output:	768,893 kWh
Recommended System Size:	502 kW-DC
Recommended System Output:	768,893 kWh
Energy Offset:	48%

Issues: Planned switchgear upgrades/timeline; north-face building shade

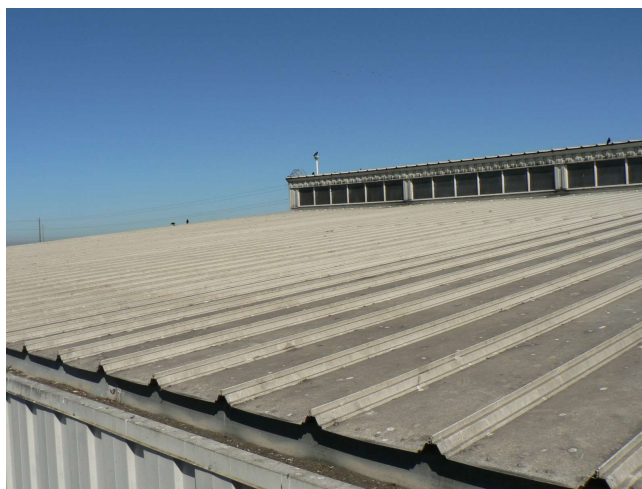
Opportunities: Potential for battery storage; community environmental leadership

The SMaRT (Sunnyvale Materials Recovery and Transfer) Station building was constructed in 1993. According to a roof service life assessment report², provided by the City, the metal standing seam portion of the roof and majority of the mechanical equipment are original from 1993. The white box shows the location of the electrical switchgear at this site.

² “Sunnyvale Recycling Center Roof Service Life Assessment” report prepared by Gale Associates, Inc on 11 May, 2012



As shown, all sections available for PV development are on the rooftop. The City desires to keep as much solar development on the roof, and out of the parking lot and materials areas, as possible at this site. According to the original site drawings, the roof has a 1:12 pitch. The roof panels are 24 inches wide and have a 3-inch standing seam. A structural review will need to be conducted in order to verify that the roof is capable of supporting the additional weight of solar PV panels and associated racking. A photo of the Section 2 rooftop, looking northwest toward Section 1, is shown below.



A total of 502 kW-DC can be installed within the identified usable sections. Further details about each section can be seen in the following table.

Section	Azimuth	Area (Sq. Ft.)	Size (kW DC)
1	195°	3,200	24
2	195°	25,700	230
3	195°	28,600	248
Total		57,500	502
Total System Production (kWh)			768,893
Recommended System Size (kW)			502
Recommended System Output (kWh)			768,893

This site uses more than 1.6 million kWh annually, with monthly demand between 700 and 1000 kW. The switchgear replacement was scheduled and completed in 2016.

Electrical Information

The voltage at this site is 480/277V. The current main breaker and switchgear amperage ratings are 3000A. There is no room within the main electrical room for any additional PV-related electrical equipment, but space may be available adjacent to the switchgear enclosure for equipment. As noted above, this site is currently scheduled to undergo an electrical upgrade.

Staging Information

Staging area of 800 SF is available pending schedule and other Sunnyvale projects at the Northeast corner of the site. Staff recommends considering the adjacent Baylands Park for necessary staging.

Exhibit 6

Operations & Scheduling

3 Notices

All Schedules, Schedule changes, Scheduled Outages, Forced Outages, and planned outages are to be submitted to Buyer by email to the following persons:

City of Sunnyvale
Department of Public Works
Attn: Nasser Fakhri
650 West Olive Ave
Sunnyvale, CA 94089
Ph: 408-730-7617

3 Meters

3.1 Metering

Proposers shall install utility-grade revenue, electronic, bi-directional meter per this Agreement and Exhibit 13, Technical Specifications and Requirements. The meter must meet all CSI rebate requirements and Local Utility requirements.

Exhibit 7**Form of Attestation**

FORM OF ATTESTATION Environmental Attribute Attestation and Bill of
Sale

Borrego Solar Systems, Inc. ("Seller") hereby sells, transfers and delivers to the City of Sunnyvale ("Buyer") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such terms are defined in the Regional Power Purchase Agreement ("Agreement") dated [Date], between Buyer and Seller) arising from the generation for delivery to the grid of the energy by the Generating Facility described below:

Facility name and location:

Project Name:

EIA ID #:

CEC ID#:

ISO Meter ID#:

Fuel Type:

Capacity (MW):

Commercial Operation Date:

Dates	MWhs generated	Dates MWhs generated
-------	----------------	----------------------

In the amount of one Environmental Attribute for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
3. The Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

(Check one)

_____ Seller owns the facility.

_____ To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility. This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Name: _____ Phone: _____

WITNESS MY HAND,

Seller: By: Title:

Date:

Exhibit 8

Insurance Requirements

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of the Buyer, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverage's and provisions:

1. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the Buyer. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Seller shall not reduce or limit Seller's contractual obligation to indemnify and defend the Indemnified Parties.

2. **EVIDENCE OF COVERAGE:** Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to Buyer, evidencing that all required insurance coverage is in effect. The Buyer reserves the rights to require the Seller to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices.

The Seller shall not receive a Notice to Proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the Buyer. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, Insurance policies and coverage(s) written on a claims-made basis:

- Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/Phase of this Agreement and acceptance of all work provided under this Agreement.
- The retroactive date must be before the execution date of the contract or the beginning of contract work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Seller must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. **ADDITIONAL INSURED:** All insurance required herein with the exception of Automobile Liability, Workers' Compensation, Employers Liability, and Professional liability shall be endorsed to name as

additional insured: Buyer or, City of Sunnyvale, the individual members thereof, and all Buyer's officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

The additional insured condition described above shall apply to all public entities entering into this agreement, with the specific entity and its respective related parties substituted for the Buyer. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the Work shall be covered as an additional insured under the same coverage as provided the Buyer as respects their ownership of the property and the work to be done thereon.

5. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the Buyer. Acceptance of Seller's insurance by Buyer shall not relieve or decrease the liability of Seller hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller.

6. SUBCONTRACTORS: Seller shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit 9. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

7. JOINT VENTURES: If Seller is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:

- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies.
- Coverage shall be at least as broad as in the ISO Forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured.

8. NOTICE OF CANCELLATION: All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Buyer insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the Buyer or their designated agent.

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self insurance shall be approved in writing by the Buyer upon satisfactory evidence of financial capacity. Seller's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities

assumed by the Seller under this Agreement.

The Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined below.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence: \$2,000,000
- b. General aggregate: \$2,000,000 c.
- Personal Injury: \$2,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the Buyer:

The additional insured requirement described above applies to each Agreement, with the specific entity and its respective related parties substituted for the City of Sunnyvale. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate.

- b. If coverage contains a deductible or self-retention, it shall not be greater than one hundred fifty thousand dollars (\$150,000) per claim /event.
- c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

7. CLAIMS MADE COVERAGE

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply In the event that a single bidder is awarded multiple bid packets with simultaneous construction periods, the Buyer reserves the right to increase insurance limits after bid award but prior to commencement of construction to reflect the higher exposure.

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence: \$2,000,000
- b. General aggregate: \$4,000,000
- c. Products/Completed Operations aggregate **: \$4,000,000
- d. Personal Injury: \$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations
- b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by the Buyer.
- c. Contractual Liability expressly including tort liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.

- d. Personal Injury liability
 - e. Independent Contractor's Protective liability
 - f. Severability of interest
 - g. Explosion, Collapse, and Underground Hazards (X, C and U)
 - h. Broad Form Property Damage liability
3. General liability coverage shall not be endorsed to exclude the following:
- a. Contractual Liability Endorsement: Insurance afforded by this policy shall apply to tort liability assumed by the insured under written contract with the Buyer.
 - b. X C & U (Explosion, Collapse and Underground) Endorsement: Insurance afforded by this policy shall provide X, C and U Hazards coverage.
4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance
- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
 - b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.
6. Property Installation floater:

The property installation floater shall insure project material and equipment intended to become a part of the installation against risks of direct physical loss while in transit, in temporary storage, and while at the installation site. The coverage shall be in the amount of the value of the completed project.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the Buyer, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence: \$2,000,000
- b. General aggregate: \$,000,000 c.
- Personal Injury: \$2,000,000

2. General liability coverage shall include:

- Premises and Operations
- Personal Injury liability
- Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage including broad form all-states coverage.
- Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

Exhibit 9**Utilization of Local Workforce in Construction Projects**

The Sunnyvale City Council has adopted a policy which encourages utilization of local workforces, including State-certified apprentices, as a means of supporting economic opportunities for all members of the community. Local workforce is defined as workers residing in Santa Clara County. The lowest responsive and responsible bidder must provide a projection of locally-hired workers utilized for this contract.

Contractor	Projected Number of Locally Hired Workers____N/A____ Projected Percent of Locally Hired Workers____N/A__%
Subcontractor(s)	Projected Number of Locally Hired Workers____2____ Projected Percent of Locally Hired Workers____10____%

Exhibit 10

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Sunnyvale ("City") has awarded to Borrego Solar Systems, Inc. as principal ("Contractor"), a contract for the public work described as follows:

The project entitled "Solar Installation on City Facilities, Project No. UY-15-05" pursuant to the award made to said Principal by the Council of the City of Sunnyvale to do and perform the following work, to wit: furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work to furnish, install, all elements necessary to provide complete, fully operational, facility-integrated, photovoltaic (PV) systems that maximize the amount of energy delivered at the City facilities, while protecting the operations and facilities, including but not limited to; planning, design, engineering, labor, services, materials, taxes, delivery, installation, construction, metering and monitoring (including kW, kWh, solar insolation, ambient temperature, and wind speed), PG&E Interconnection & Net-Metering, acquiring CSI incentive, commissioning, operation and maintenance, and public solar kiosk and display, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications (the "work").

It is acknowledged that the contract provides for a one-year warranty period during which time this Bond remains in full force and effect. The contract and all of its terms and conditions are incorporated into this Bond by reference.

AND WHEREAS, the Contractor is required to furnish a bond in connection with the contract guaranteeing its faithful performance.

AND THEREFORE, we the undersigned Contractor as principal and _____ a _____, admitted and duly authorized to transact business under the laws of the State of California as surety, are held and firmly bound unto the City as obligee in the sum of {Amount in Words} {\$Amount in Numbers} (which amount is not less than 100% of the contract price) to be paid to the City or its successors and assigns; and for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION of the obligation is such:

That if the Contractor, (or the Contractor's heirs, executors, administrators, successors or assigns) shall in all respects abide by, and well and truly keep and perform all of the covenants, conditions and agreements in the contract (and any alteration made as provided in the contract) at the time and in the manner specified and in all respects according to their true intent and meaning; and if the contractor shall indemnify and save harmless the City, its officers, employees and agents, as stipulated in the contract, then this obligation shall become and be null and void; otherwise this obligation shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the contract, the obligation of the Contractor and surety under this Bond shall remain in effect for a period of one (1) year after the completion and acceptance of the work. During that time, if the Contractor (or the Contractor's heirs, executors, administrators, successors or assigns) fails to make full, complete and satisfactory repair and replacement or totally protect the City from any loss or damage made evident during that year which results from or is caused by either defective materials or faulty workmanship in the prosecution of the work, then the obligation shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety shall continue so long as any obligation of the Contractor remains.

No prepayment or delay in payments, and no change, extension, addition or alteration of any provision of the contract or in the specifications agreed to between the Contractor and the City, or any forbearance on the part of the City shall operate to relieve the surety. The surety hereby waives the provisions of Section 2819 of the California Civil Code. The surety waives all rights of subrogation against the City or any person employed by the City. If the contract price increases by the issuance of change orders, the amount specified in this bond shall increase by the same amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this
_____ day of _____, 20____.

SURETY {Name}:

CONTRACTOR {Name}:

{Address of Principal Place of Business}

{Address}

Telephone No.: _____

By: _____

Facsimile No.: _____

(Name: print or type)

By: _____
Attorney in Fact

Title: _____

By: _____

(Name: print or type)

Title: _____

**(Notice: The signatures of the Surety
and Contractor on this bond must be
acknowledged before a notary.)**

Exhibit 11

Detailed Scope of Work

Scope of Work – Solar Support Structure + Roof Mount System**1. System Description**

Site Address: SMaRT Station
301 Carl Road, Sunnyvale, CA 94089

Corporation yard
221 Commercial Street, Sunnyvale, CA 94085

System Rating: 632.94 kW DC array nameplate
Design Variant: 5/30/2019

Major Equipment:

The equipment and quantities indicated below are preliminary and subject to change as part of design and engineering. Substitutions of specific components shall be allowed, subject to Customer approval, which shall not be unreasonably conditioned, delayed, or withheld.

	<i>SMaRT</i>	<i>Corp Yard</i>	
<u>Item</u>	<u>Qty</u>	<u>Qty</u>	<u>Description</u>
Solar Modules	1260	384	LG 395W modules or equal
Inverters	6	2	SunGrow 66kW inverters or equal
Racking / Support		2	Double cantilever and/or single cantilever structures per the Pre-sales Design layout
Racking / Support	1262		Ironridge flush mount racking or equal
Monitoring		2	AlsoEnergy Data Acquisition System (DAS) with: Qty (2) Revenue grade meter Qty (2) Weather station Qty (2) Cellular Modem Qty (5) year performance monitoring contract Qty (5) year cellular data plan
Training		1	Onsite training session
Documentation		1	User Manual in electronic format
LED Lighting			Oracle OVR Series or Equal

2. Design/Builder Scope of Work

Design/Builder shall furnish to Customer the labor, equipment, material, permits and services set forth in this Agreement to complete the design, engineering, construction, commissioning and interconnection for a solar photovoltaic system to be constructed at the Customer's Site.

The Work shall include:

1. Design and engineering per the Codes currently in force as of the Effective Date with the local Authority Having Jurisdiction (AHJ).
 - a. Site discovery
 - b. 50% design development drawings for Customer review
 - c. Construction drawings provided for Customer review and approval
 - d. Construction drawings to submit for permitting
 - e. Record drawings provided at the conclusion of the project
2. Building and electrical permits and inspections required by the local AHJ for the construction of the PV system.
3. Interconnection application and approval by the local Utility. The costs for interconnection study and utility work are included assuming NEM2.0 Fast Track study process (or equivalent) through Supplemental Review only.
4. Procurement and delivery of the System materials to the job site.
5. Installation of the System and connection to the Customer's electrical distribution system.
6. Commissioning and testing per Borrego's procedures.
7. Painting of exterior exposed conduits if attached to a building.

3. Assumptions

The Contract Price and Schedule are based on the following assumptions. If any changes to the assumptions are required, then the Contract Price and Schedule shall be adjusted by an equitable Change Order.

A. General

1. The electrical interconnection shall be 480V line side at SMaRT Station located at main switch gear located in parking lot ("the Point of Common Coupling").
2. The electrical interconnection shall be 208V line side at Corp Yard located at buildings main switch gear ("the Point of Common Coupling").
3. The new PV system shall be the only generation and/or energy storage on the Customer's site that operates in parallel with the local Utility.
4. The proposed equipment locations are acceptable to the Customer.
5. The following shall be allowed per the applicable Codes and Borrego Solar's engineering practices:
 1. USE-2 or PV Wire conductors in free air in array source circuits
 2. Schedule 40 PVC below grade
 3. Electrical metallic tubing conduit (EMT), including in outdoor locations where not subject to physical damage
 4. Liquid tight flexible metal conduit (LFMC)
 5. Aluminum conductors

6. Aluminum windings and bus bars
6. Trenching assumptions:
 1. Depth shall be 4 feet or less
 2. Native backfill shall be allowed
 3. If trenching is required through asphalt/concrete, a maximum of 4" depth of asphalt/concrete is assumed.
 4. No T-cut requirements for asphalt/concrete patchback
 5. No underground obstructions or hidden conditions
 6. Customer acknowledges that Contractor may temporarily block off portions of the parking lot / sidewalk / building access to complete trench work.
7. AHJ permit costs shall not exceed 1.5% of the contract price. Schedule assumes the following.
 1. All AHJ permits shall be issued within 20 business days of Contractor's submittal.
8. Clear and free access to all array and equipment locations.
9. One time mobilization to site for construction, to be done in a single phase.
10. All labor is assumed to be during regular business hours, except for interconnection work, which may be required outside of regular business hours. Any other work done outside of normal business hours shall be at extra cost, and Contractor shall be entitled to a change order.
11. Labor rates are based on local prevailing wage rates but exclude collective bargaining agreements, etc.
12. Utility power shutdowns will likely be required for design investigation and for system installation. Contractor and Customer will coordinate on shutdowns to minimize impacts to facility operations.
13. Payment and performance bonding is excluded.
14. Builder's Risk insurance is excluded.
15. Sales Tax on materials is included.

B. Solar Support Structure

1. Inverters and electrical equipment may be mounted on support structure columns or as otherwise indicated in Borrego's proposal.
2. Subsurface conditions allow for construction of the system per the pre-sales design.
3. A minimum six week lead for steel mill run.
4. All conduits are assumed to be installed within concrete footings and above-grade abutments (when included).
5. LED Lighting
 1. New lighting to be installed under canopy, only.
 2. New lighting will utilize existing lighting circuits. No modifications or upgrades to the existing lighting or controls is included.
 3. Lighting fixtures to be individually controlled for dimming and motion-sensitivity, as required for California Title 24 compliance.
 4. Fixtures to be removed will be poles and pedestals, to six inches below grade.
6. Solar Support Structure description
 1. Maximum 27' spacing between support columns assumed for all structures.
 2. Maximum 7° tilt for all structures.
 3. Minimum 9' clear height for all structures. In some cases the canopy will need

- to follow slope in order to achieve maximum clear height.
- 4. Foundations assumed to be 30" diameter and maximum 12' depth below grade, subject to change pending final structural and geotechnical analysis.
- 4. Concrete abutments at each column base are included, unpainted spiral-form concrete 30" diameter and 30" above grade.
- 5. Major structural steel (columns and beams) will be painted per supplier's standard colors.
- 6. Purlins and other light gauge steel shall be G90 galvanized.
- 7. Canopy provides shading only and is not weather-tight.
- 7. Existing parking lot striping and turning radii are assumed to be compliant with local Fire Codes. Fire truck access is assumed to be required only for main access aisle ways to building(s), not between individual parking rows. It is assumed that solar canopies will not span or in any way cover a known fire lane.
- 8. All structures will be designed to Importance Factor 2.

C. Roof Mount

- 1. Inverters and electrical equipment can be mounted on the roof, or as otherwise indicated in Borrego's proposal. Inverters can be mounted within 10' of the array to meet rapid shut-down requirements.
- 2. The existing roof structure is adequate to support the solar array and associated equipment. A roof live load of 0 pounds per square foot is assumed in the array areas.
- 3. The existing roof deck / membrane is weather-tight and in good condition.
- 4. Outdoor electrical conduits shall be permitted on the exterior of the building. Routing will be reviewed with the Customer prior to installation.
- 5. Customer acknowledges that Contractor is not responsible for pre-existing roof conditions.
- 6. Customer shall be responsible for compliance with any roof warranties and manufacturer requirements, including any required roof work, repairs or modifications.

4. Exclusions

The following items and any related items are not included as part of the Work. If any of these items are required, whether by the Customer, local AHJ, local Utility or other party, then the Contract Price and Schedule shall be adjusted by an equitable Change Order.

A. General

- 1. Upgrades or repairs to any existing switchgear, panelboards, or any other part of the Customer's electrical system.
- 2. Utility infrastructure upgrades or repairs, should they be required.
- 3. Interconnection applications approval, upgrades or equipment for any other generation source, current or planned.
- 4. Any equipment, materials or requirements resulting from changes in the applicable Codes, standards or regulations after the commencement date of this Agreement
- 5. Groundwater, caving or shoring, contaminated soils, rocky or "hard dig" conditions that would affect construction tasks like drilling, digging, road building, concrete work, trenching, and/or directional boring.
- 6. Any required over-excavation or export due to unsuitable soils and any imported fill as a

result.

7. Concrete encasement of conduits or underground duct banks.
8. Tree/vegetation trimming, tree removal, landscaping, irrigation, ground cover, soil stabilization, reseeding or replanting, except as included above.
9. Permanent roads, access points, fencing, equipment screens, or other site improvements unless otherwise called out in Borrego's proposal.
10. Removal or remediation of asbestos, lead or any hazardous material.
11. Badging, screening, testing or background checks for laborers.
12. Zoning, special use, conditional use or other permits are excluded. Permitting or approvals for work performed previously or by other contractors are excluded.
13. Heavy equipment may be used during construction and may leave tire marks on finish surfaces. Contractor will make reasonable efforts to minimize marking or damage to these surfaces but there may be some marks or cracks. Slurry/seal coating and painting of the hardscape for aesthetic reasons are excluded from this work.
14. Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for repairing any material damage to site and existing finishes resulting from Contractor's work on site. Existing pavement areas are assumed to be structurally adequate to support heavy construction equipment, and repair of any damage sustained as a result of insufficient structural capacity of pavement areas is excluded.
15. Hard line connection to existing facility LAN for Data acquisition system.
16. Materials, services, or equipment beyond the requirements of the current Electrical, building and fire Code enforced by the local AHJ.
17. Glare studies.
18. Any spare parts or equipment, except as included above.
19. Any tamper-resistant equipment, except as included above.
20. Any future or new tariffs on solar equipment.
21. All other items not specifically stated as being included.

B. Solar Support Structure

1. Security cameras.
2. The Contractor shall be responsible for all Americans with Disabilities Act (ADA) compliance issues under the footprint of the PV array canopies, but not path of travel access issues that fall outside of the canopy footprint and need to be modified/repaired/upgraded to meet current code requirements.
3. Fire suppression system, including fire detection and alarms, new or upgraded fire hydrants, fire retardant paint or sprinklers.
4. New wheel stops, drive aisle bollards or low clearance signage for array protection. Repairs to previously damaged existing wheel stops are also excluded.
5. Parking lot re-striping.
6. Rapid shutdown functionality.

C. Roof Mount

1. Structural repairs or reinforcement to the existing roof or building.
2. Rooftop penetrations or other roof work required prior to installation.
3. Special requirements by the roofing manufacturer or roofing subcontractor, including slipsheets, walkpads, roof jacks, stanchions, etc.

5. Customer Provided Equipment, Materials, Permits, Services and Other Items

The Customer agrees to provide the following:

1. Accurate as-built electrical and structural drawings of the facility. If not provided, Contractor shall be allowed a Change Order for any electrical and structural investigation or evaluation required for the design.
2. Customer shall assist Contractor in locating existing irrigation lines in area of work. Small irrigation lines typically cannot be located with underground locating devices, and unless locations are provided they would be considered an unforeseen condition.
3. Customer shall cooperate and provide design comments and responses to Contractor's requests for information within fifteen (15) business days to provide any information necessary for the design, permitting, construction and approvals for the project.
4. Customer shall allow Contractor reasonable use of Customer's utilities (electric and water) while on job site.
- 5.
6. Adequate on-site parking for Contractor and installation crews for the duration of the project.
7. Adequate laydown and storage space on site for the duration of the project.
8. Cellular and DAS data plans renewal after prepaid terms.

Exhibit 12

Project Site Milestones

PROJECT MILESTONE	EXPECTED MILESTONE DATE
Notice to Proceed	9/27/19
Mechanical Completion	5/5/20
Substantial Completion	6/16/20
Expected Commercial Operation Date	7/2/20
Final Completion	9/15/20

Exhibit 13

General Provisions, Special Provisions, and Technical Specifications**Technical Specifications – Table of Contents**

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THROUGHOUT THIS DOCUMENT THE TERM CONTRACTOR SHALL MEAN SELLER UNDER A PPA FINANCING OR INSTALLER UNDER A DIRECT PURCHASE AGREEMENT.

1. TECHNICAL REQUIREMENTS

1.1 General Considerations

All documentation and components furnished by Contractor 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), Pacific Gas and Electric (PG&E) Interconnection Requirements, California Building Code (CBC) and all other federal, state, and local jurisdictions having authority.

1.2 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)
- California Building Code (CBC)
- All other Authorities Having Jurisdiction

1.3 Modules

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

- IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”.
- System modules shall be UL1703 listed.
- 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.
- Bolted and similar connections shall be non-corrosive.
- 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.

1.4 Inverters

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

- Inverters shall be suitable for grid interconnection and shall be compliant with all PG&E 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.
-
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall have a THD < 5%.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors.
- 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, of 96%.

1.5 Electrical Balance of System Components

- Each proposed PV system shall include, at a minimum, one (1) DC disconnect and one (1) AC disconnect for safety and maintenance concerns.
- String combiner boxes must include properly-sized fusing, and all metal equipment and components must be bonded and grounded as required by NEC.
- String combiner boxes shall be load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- All system wiring and conduit must comply with NEC stipulations, and all indoor and outdoor wiring, outdoor-rated or otherwise, must be enclosed in PVC, LMF, EMT or RIGID conduit or covered raceway, except adjacent panel connections.

- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

1.6 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 Contractor'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. Contractor 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 (1) not void the module warranty, and (2) conform to the module manufacturer's mounting parameters.
- Final coating and paint colors shall be reviewed and approved by the City during Design Review. Coating shall be selected from standard available options provided by Borrego.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

1.7 Corrosion Control

In addition to the above, Corrosion Control proposed by Contractor must comply with at least, but not limited to the following requirements:

- Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components

- 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.

1.8 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 (3) 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 or thermal systems will be reviewed for code compliance and adherence to 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 ballasted, 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 Contractor prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Contractor 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 Contractor proceeding with work. The City will make available the roofing manufacturer for each building for consultation with Contractor as part of the design process.
- All roofing penetrations and waterproofing shall be performed or overseen 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.

- All the design submittals relating to the sealing of any roof penetrations will be approved by the roofing contractor.
- Any damage to roofing material during installation of solar systems caused by the Contractor must be remedied by Contractor.
- The installation of PV modules, inverters and other equipment on building roofs will be designed to minimize visibility of the equipment from the ground.

1.9 Shade Structure Requirements

Contractor will be responsible for incorporating the following elements in the design and construction of the System:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structures located in parking lots shall have a concrete bollards installed on support posts. The bollards shall extend up to a minimum elevation of thirty (30) inches above finished grade. This requirement may be waived at the City's sole discretion.
- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the City's approval.

1.10 Ancillary Equipment Enclosures

Contractor will be responsible for incorporating the following elements in the design and construction of the System:

- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal City operations and minimizes the visual impacts to the site.

1.11 Placards and Signage

- Placards and signs shall correspond with requirements in the National Electric Code and the interconnecting utility in terms of appearance, wording, and placement.
- Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

1.12 Removed

-

1.13 N/A

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1.14 Short Circuit Coordination

- As part of their design submittals, Contractor shall identify overcurrent protective devices installed on the project (AC/DC fuses and AC/DC circuit breakers). Design submittals shall include calculations for the devices installed as part of the PV project.

1.15 Wiring and Cabling Runs

- Contractor shall install all AC conductors in conduit.
- Direct burial wire will not be acceptable. 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 grounding conductor sized per NEC requirements and continuity shall be maintained throughout conduit runs and pullboxes. Minimum conduit size shall be $\frac{3}{4}$ ". A tracing/caution tape must be installed in the trench over all buried conduit.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC in force as of the Effective Date. The Contractor is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.
- 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 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. EMT to be allowed on solar support structures above 8 feet.

- All conduits, boxes, enclosures, etc. shall be secured per NEC 690 requirements.
- All conductors shall be insulated, rated for 600V, minimum. DC conductors shall be PV Wire or USE-2 600V UL Listed Sunlight resistant wire.
- All items shall be U.L. listed or equivalent.
- All spare conduits shall be cleaned and provided with a pullwire.
- All feeders and branch circuits shall be sized to minimize voltage drop and losses and shall be in compliance with NEC requirements.
- Contractor shall furnish, install, and connect combiners and recombiners as necessary to complete the System. Enclosures for combiners and recombiners shall be NEMA 3R rated or higher.
- All systems, conduit, boxes, components, etc. shall be grounded and bonded per NEC requirements and in accordance with Section 3.5.16.
- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Contractor 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. Should damage occur to these existing installations, the costs of repair shall be at the Seller's expense and made to the Buyer's satisfaction, unless these installations did not appear in underground surveys or potholing.
- Design Builder shall install and secure the exposed string cable homeruns along the beams or structure where the combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 3% and acceptable wire loss in AC circuits is < 3% as well.

1.16 Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.
- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

1.17 N/A

-

1.18 Shade Structure Lighting

- Installation of shade structure PV systems in all locations shall include the installation of new high efficiency lighting. Installation of shade structure PV systems shall include the removal of existing security light poles and pedestals, to six inches below grade.
- Lighting shall be LED lighting or other similar energy efficient lighting system.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- Minimum horizontal illuminance shall be maintained per Code.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing proposed new SSS canopy lighting.
- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.

Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the City.

1.19 Monitoring System, DAS, and Reporting

Contractor 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. Contractor shall provide equipment to connect the DAS via Ethernet cable, 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 needed 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
- In-plane irradiance
- 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
-

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed for each site

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. Historical data from the full lifetime of the PV system shall be available through the online interface.

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. At a minimum, City shall have the ability to compare irradiance to simultaneous power production measurements through linear regression analysis.

Additionally, Contractor shall make available, at no additional cost, the following reports for a term of five (5) years after Final Completion of the project:

- Monthly Production report shall be available online 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.

1.20 N/A1.21 Interconnection

Contractor is responsible for obtaining all necessary PG&E interconnection approvals for each PV system being installed. Contractor must comply with all interconnection requirements, such as CPUC Rule 21 for the PG&E service territory. Contractor 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), unless specified otherwise by City or its agents. Contractor shall be responsible for ensuring the system design and interconnection qualifies for NEM, as applicable.

1.22 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the location closest to the site. 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 are accurate to the designed systems and utilize simulation results for economic evaluations. Contractor shall be responsible for updating the production models at approved permit set, and subsequently if changes are made to the proposed system designs that will materially impact production.

1.23 Shading

Contractor 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, Contractor shall locate the array farther from the object than:

- 2H to the North of the object
- 2H to the East or West of the object
- 2H to any non-cardinal direction of the object

Any Contractor 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 Contractor shall be removed by the Contractor 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 Contractor identifies these trees during the design process. The Contractor shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Contractor's responsibility.

2. **WARRANTIES**

Contractor shall provide a comprehensive ten (10) 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.
- Inverters: Inverters shall carry a minimum ten (10) year warranty.
- Meters: At minimum, meters shall have a one (1) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- 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 conforming to industry standards.

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

3. PROCUREMENT/CONSTRUCTION

3.1 Scope of Supply

Contractor shall provide all necessary labor, materials, equipment, and services required to install complete integrated turnkey PV systems. Contractor 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. Contractor shall submit As-Built Construction Drawings in hard copy with two (2) sets and an electronic copy in DWG format to the City after completion of the Proving Period for each system at each site.

3.2 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.

Contractor shall use means necessary to protect the materials and equipment before, during and after installation until Substantial Completion. Contractor 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.

3.3 Line Location

Contractor 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. In addition to USA Dig and utility line-locating, a private line-locator must be used for any project requiring underground work.

3.4 Quality Assurance and Quality Control

Contractor 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, Contractor shall submit a copy of the QA/QC Plan for review and approval by the City.

To ensure the highest quality of the installation, Contractor 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.
- Provide Special Inspection for trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements.
- 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.
- Torque all mechanical and electrical connections and terminations according to manufacturer specifications, with marking/sealing of all electrical terminations at appropriate torque point.
- 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. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

3.5 Removal and Remediation

Contractor shall remove excess construction spoils, abandoned footings, utilities, construction equipment and other byproducts of its construction. All disturbed areas including landscaping, asphalt, and concrete shall be remediated to be in equal or better condition than found, with the exception of fair wear and tear. Parking lots shall be re-stripped if affected by construction operations.

The site shall be left clean and free of debris or dirt that has accumulated as a result of construction operations.

4. **TESTING**

Following completion of construction, Contractor 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.

4.1 Acceptance Testing

Contractor 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.
- Detailed list of all items to be inspected and tests to be conducted.
- 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 voltage (open circuit) and amperage (under load) testing for all PV strings. Amperage testing shall be performed concurrently with irradiance testing.
- 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. Performance testing shall be performed concurrently with irradiance testing.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Contractor conducts all Acceptance Testing based on the Testing Plan approved by the City prior to substantial completion, Contractor 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. Contractor shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

4.2 System Startup

Following City approval of the Acceptance Test Report, Contractor 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
- 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.

4.3 Proving Period (30 Days)

Upon completion of Acceptance Testing and System Startup, and approval by the City, Contractor shall monitor the system during a thirty (30) day Proving Period and submit a report for City review and approval 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
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Contractor 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. Contractor 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 Contractor, shall be correlated during this test to verify their accuracy in measuring system production.

All data and reports required in Section 3.5.20 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 Contractor, deficiencies shall be identified with proposed corrective actions submitted to the City, and the Proving Period test repeated. Contractor 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 and submitted to the City for review and approval. The report shall contain, but not be limited to, the following information; calculations shall be provided in Excel format with formulas visible to allow for peer review:

- System description
- Test period

- Test results
- Anomalies identified during test
- Corrective action performed
- Actual measured performance
- Calculations detailing expected performance under TMY conditions

4.4 Close-Out Documentation Requirements

Close-Out documents prepared by Contractor must include at minimum, but not limited to, the following items:

- Final As-Built Drawing Set with accurate string diagram
- Megger test results
- Module flash-test results with serial numbers
- Warranties for inverters, modules, racking and monitoring
- Signed inspections cards from AHJ and required Special Inspections
- Interconnection agreements and Permission To Operate
- Owner's Manual

5. **OPERATIONS AND MAINTENANCE**

For systems structured as a direct purchase, Contractor shall offer Operations and Maintenance services for ten (10) years with their Proposal, with an option to extend the Contract for up to an additional ten (10) years. The City reserves the right to not execute the Operations and Maintenance services agreement. For third-party owned systems, Operations and Maintenance services will be performed for the life of the contract at the expense of the Contractor.

In offering such services, Contractor shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior) with supporting documentation delivered to the City after the Work has been performed. Maintenance by Contractor shall ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of panel wash-downs shall be determined by Contractor based on system monitoring data. Environmental sensors such as pyranometers shall be tested and recalibrated at least once every three (3) years.

Contractor shall perform the following maintenance services, at a minimum, as described in the following sections:

5.1 Preventative Maintenance

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/amperage) at inverter and string levels
- System visual inspection and necessary corrections:
 - Inspect for stolen, broken or damaged PV modules, record damage and location. Report to the City and wait for the City to authorize a course of action.
 - Inspect PV wiring for loose connections and wire condition. Resolve issues as needed or report larger issues to the City.
 - Inspect for wires in contact with the structure or hanging loose from racking and resolve issues as needed.
 - Check mechanical attachment of the PV modules to the racking and resolve issue as needed.
 - Check attachment of racking components to each other and the structure and resolve issue as needed.
 - Verify proper system grounding is in place from panels to the inverter and resolve issue as needed.
 - Check conduits and raceways for proper anchorage to structures and resolve issue as needed.
 - Inspect all metallic parts for corrosion and resolve issue as needed.
 - Check combiner boxes for proper fuse sizes and continuity and resolve issue as needed.
 - Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration, etc) and resolve issue as needed.
 - Inspect disconnects for proper operation and resolve issues as needed.
 - Survey entire jobsite for debris or obstructions and resolve issues as needed.
 - Inspect fasteners for proper torque and corrosion and resolve issues as needed.
 - Inspect inverter pad for cracking or settling and resolve issues as needed.
 - Inspect electrical hardware for proper warning and rating labeling and resolve issues as needed.
 - Review as built documentation as needed.
 - Inspect alignment of arrays and racking to identify settling foundations or loose attachments and resolve issues as needed or report issues to the City.

- Inspect operation of tracking hinges, pivots, motors and actuators if present and resolve issues as needed.
- Check for proper operation and reporting of monitoring hardware and resolve issues as needed.
- Inspect sealed electrical components for condensation buildup and resolve issues as needed.
- Inspect wiring and hardware for signs of damage from vandalism or animal damage and resolve issues as needed.
- Routine system maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work.
- Module cleaning, at a frequency to be determined by the ongoing monitoring of the system such that effect on production is no more than 5%, but not less often than twice a year.
- Routine DAS maintenance to include sensor calibration and data integrity check.

5.2 Troubleshooting, Inspection and Additional Repairs

- Dispatch of field service resources within two (2) business days of notification (via automated or manual means) for repairs as necessary to maintain system performance.
- Any corrective action required to restore the system to fully operational status shall be completed within twenty-four (24) hours of the service resources arriving on-site.
- Major system repairs, not to include mid-voltage switchgear or transformers.

5.3 Customer Service Support

- Support telephone line made available to City staff to answer questions or report issues.
- Support line shall be staffed during operational hours from 8 am – 6 pm California Standard Time. During times outside of this operational period, an urgent call shall be able to be routed to a supervisor for immediate action.

5.4 Major Component Maintenance and Repair

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer's warranty specifications. Those include but are not limited to the following annually:

- Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
 - Inspect, clean/replace air filter elements
 - Check for corrosion on all terminals, cables and enclosure.
 - Check all fuses.
 - Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
 - Check condition of all the AC and DC surge suppressors.
 - Torque terminals and all fasteners in electrical power connections.
 - Check the operation of all safety devices (E-stop, door switches).
 - Record all operating voltages and current readings via the front display panel.
 - Record all inspections completed.
 - Inform inverter manufacturer of all deficiencies identified.
 - Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.
- Customer advocacy with vendors.

5.5 Other Systems Service

- O&M Manuals – Contractor shall provide three (3) copies of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the City as they become available.
- Management of long term service and warranty agreements, ongoing.
- Contractor shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the City on a minimum monthly basis.

O&M services shall be priced separately from the design and construction of the PV system. Contractor shall submit a detailed description of their O&M services, detailing the activities and the intervals at which they will be performed, with their Proposal.

6. **PRODUCTION GUARANTEE**

Contractor shall offer a Production Guarantee as part of their Proposal. The Production Guarantee shall comply with the PPA Terms and Conditions and Design-Build Terms and Conditions included as Attachment B of the RFP.

7. TRAINING

The Contractor shall provide four (4) hours of on-site training for City personnel in all aspects of operation, routine maintenance, and safety of the PV systems, DAS, and monitoring solution.

At a minimum, training topics shall include the following:

- PV system safety, including shut-down procedures
- PV module maintenance and troubleshooting
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- DAS and monitoring solution, including standard and custom reporting

Contractor shall submit a proposed Training Plan during the design process for approval and provide all training materials and manuals to support on-site training in advance of scheduled training sessions (see schedule of submittals in Attachment A, Scope of Work, III. Scope of Services, C. Project Management, 2. Submittals). The on-site portion of the training program shall be scheduled to take place at the jobsite at a time agreeable to both the City and Contractor.