



May 1, 2012

Dear Sustainable Cities Network (SCN) Community Participant,

The Power Purchase Agreement (PPA) contained herein is a sample document created to achieve the following goals:

- Serves as a template agreement or contract that includes beneficial contractual terms for local agencies.
- Provides the opportunity for growth of the construction and maintenance of energy efficiency systems which are cost effective, efficient and environmentally-friendly.
- Provides a sample contract that enhances the purchasing of power of renewable energy (also capacity and/or ancillary services) for the benefit of a community, quality of life and the environment.
- Facilitate the financing of the power generating asset and system.
- Meets the expectations and rules for the generation of a fair market for solar and other types of renewable energy within Arizona and other states within the United States.

This PPA sample document should be viewed as a dynamic agreement. Its intent is to provide a starting document for local agencies (cities, towns, counties, schools, organizations, etc...) to use when considering agreements and negotiations with electricity generators. Local agencies may find the need to customize and/or change a section(s) of the sample language. Customization is encouraged. In the event a community makes a change to the sample document, SCN strongly encourages the community share the changed/revised document with SCN so it can continue to adjust and improve the PPA document. The reason for the change and the result should be communicated to SCN.

Developing a good PPA is important because it include defines the financing terms and conditions for a power or energy renewable systems. It will clearly specify relevant dates of the project, when the project will be operational, as well as the electricity rates, and the amount of electricity to be generated and bought/sold. One of the incentives for using a PPA is that the rates for electricity are agreed upon in the contract. SCN's goal is that all its members and users of this PPA obtain rates that are beneficial for them and Arizona.

It is not the intention of SCN to provide specific contract advice but rather to provide users/communities with information to better understand their options when creating and negotiating a PPA. Specific contract advice will not be provided and SCN urges you to consult with qualified agency staff for contract writing, negotiation and legal verification that may serve your agency's interests, needs and questions. This document was written by SCN and it no way holds Arizona State University, the Global Institute of Sustainability, SCN and its member communities liable for its content. This document is to be used for reference purposes only.

Acknowledgements

Many individuals and communities need to be thanked and recognized for their efforts and involvement in the development of this PPA. Special thanks go to: those involved in SCN's Steering Committee, the Solar & Energy Efficiency (SEE) Workgroup and the Solar Finance Subgroup: Scott Bouchie (City of Mesa), former Chair of SCN's SEE Workgroup and coordinator of the first efforts to craft a PPA sample document; and Maria Angelica Deeb (City of Mesa), SCN SEE Workgroup Chair, together with Bruce Plenk (City of Tucson), Erik Fitzer (Town of Gila Bend), Terry Lowe (City of Surprise), Kris Mayes (ASU Sustainable Law Program), National Renewable Energy Laboratory (NREL) and Anne Reichman and Gina Apsey (SCN) for developing and refining this document. Special thanks go to these people for working on the PPA amidst their own agency work, expecting in return only the development of a PPA that may serve their community, SCN member communities and Arizona.

FINAL, May 1, 2012

**SAMPLE ARIZONA SOLAR
POWER PURCHASE AGREEMENT**

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“PPA,” or “Agreement,” including all exhibits) is witnessed, acknowledged, and executed by authorized representatives of _____ (“Seller”) and _____ (“Buyer”) (each, a “Party,” and together, the “Parties”).

RECITALS

- A. Buyer wishes to meet [a part of] its power and/or hot water 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 and/or hot water from renewable resources in a [cooperative/joint solicitation led by _____] OR [solicitation] [use appropriate choice];
- C. Seller is in the business of designing, constructing, operating and maintaining solar systems for the purpose of selling electricity and/or hot water generated by the systems to its customers;
- D. Buyer has selected Seller to design, construct, own and operate a solar generating system [solar hot water and/or PV system] to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- E. Seller intends to design, construct, own, operate, and maintain renewable energy facilities that will qualify as Eligible Renewable Energy Resources as defined in the Arizona Renewable Energy Standard and Tariff (REST) Rules and desires to sell electricity and/or hot water produced by such facilities together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;
- F. Buyer desires to purchase electricity [and/or hot water] produced by Seller’s facility, together with all Environmental Attributes pursuant to the terms and conditions set forth herein.

Comment [AR1]: Customizable

Comment [AR2]: Customizable

Comment [AR3]: Customizable

Comment [AR4]: Customizable

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 the Agreement to the terms or phrases below shall have the meanings as set forth in this Article 1. -In the event of a conflict between the information in this Article and any more

specific provision of the Agreement, the more specific provision shall control.

- 1.1 “Access Rights” has the meaning assigned to it in Exhibit A.
- 1.2 “Actual System Output” is the actual metered electricity produced by the Generating Facility
- 1.3 “Adjusted Base Contract Price” means the Base Contract Price adjusted according to Article 4.3(a).
- 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 the Power Purchase Agreement entered into by and between Buyer and Seller, and all exhibits, attached hereto and incorporated herein.
- 1.6 “Annual Escalation Adjustment” means the inflation factor applied to the Base Contract Price as described in Exhibit 6 [Contract Price]. ~~[Delete if no annual escalation increase]~~
- 1.7 “Applicable Law” means, with respect to any person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental 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 “Arizona REST” means the Arizona Renewable Energy Standard and Tariff as adopted by the Arizona Corporation Commission in Decision No. 69127, issued November 14, 2006 and subsequent revisions.
- 1.9 “Bankruptcy Event” means with respect to a Party:
 - a) the (A) application by such party for or consent by such party 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; (B) admission in writing by such party of its inability to pay its debts as such debts become due; (C) making by such party of a general assignment for the benefit of its creditors; (D) commencement by such party of a voluntary case under any bankruptcy law; (E) filing by such party of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taking by such party of any corporate or other action for the purpose of effecting any of the foregoing; or
 - b) a proceeding or case that has been commenced without the application or consent of such party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such party under any bankruptcy law, and

Comment [AR5]: Customizable

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 unstayed and in effect for a period of sixty (60) days.

- 1.10** “Base Contract Price” means the price in \$ U.S. per kWh to be paid by Buyer to Seller in Year 1 for the purchase of the Delivered Energy, as specified in Article 4 and Exhibit 6 [Contract Price].
- 1.11** “Business Day” means any day other than a Saturday, Sunday, public holidays recognized by Arizona governmental entities or any other day on which banking institutions in Arizona are required or authorized by applicable law to be closed for business.
- 1.12** “Buyout Date” has the meaning assigned to it in Article 2.
- 1.13** “Buyout Price” means the amount determined to be the Fair Market Value of the applicable Generating Facility, as determined by the appraisal process described in Article 2.2.
- 1.14** “Commercial Operation” means operation of the Generating Facility after [designated person] has made a determination that the Generating Facility has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the specifications set forth in Exhibit 3 [Description of Generating Facilities], Exhibit 4 [Technical and Warranty Requirements]; and Exhibit 5 [Engineering & Construction Requirements], (ii) Seller has successfully completed the Commissioning Tests, and (iii) the Generating Facility commences generating electricity for sale to the Buyer at the Project Sites.
- 1.15** “Commercial Operation Date” means the date on which Commercial Operation first occurs.
- 1.16** “Commercial Operation Deadline” means the construction deadline set by the terms of this Agreement or any agreement with the local utility company.
- 1.17** “Commissioning Tests” means the tests set forth in Exhibit 5 [Engineering & Construction Requirements] Section 7 [Commissioning Requirements].
- 1.18** “Commencement of Work Date” means the date on which Seller begins the physical construction work at the premises of the Generating Facilities which are the subject of this Agreement.
- 1.19** “Commercially Available Local Electric Utility Provided Energy” means the price of electricity in cents per kilowatt hour for the applicable time period from the interconnected utility company for the rate class which includes Buyer’s XXX |
- 1.20** “Contract AC Power Rating” means the AC power rating for the Generating Facility, as specified in Exhibit 3.
- 1.21** “Contract Year” means each year beginning on January 1st and ending on December 31st of such year following the Commercial Operation Date; provided,

Comment [AR6]: Customizable

however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the Commercial Operation Date.

- 1.22 “Days” unless otherwise specified, means calendar days.
- 1.23 “Degradation” means forecasted deterioration and decreasing efficiency of Generating Facilities, calculated on an annual basis, due to normal wear and tear, and resulting in reductions in power output.
- 1.24 “Delivered Energy” means the amount of energy delivered by Seller to the Delivery Point as recorded by Seller’s Meters.
- 1.25 “Delivery Point” means the metering location at the service entrance for each Generating Facility, as specified in Exhibit 3 [Description of Generating Facilities].
- 1.26 “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 and any successor agency thereto, including the Clean Air Markets Division of the United States Environmental Protection Agency, and any such Arizona state agency.
- 1.27 “Early Termination Fee” is the agreed upon fee as calculated in Exhibit C.
- 1.28 “Effective Date” means the date of last signature on this Agreement.
- 1.29 “Energy” means the amount of electricity generated by each Generating Facility and delivered to Buyer pursuant to this Agreement, as expressed in units of kWh.
- 1.30 “Environmental Attributes” means any and all renewable energy credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its displacement of conventional energy generation, including (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 the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions.
- 1.31 “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 pursuant thereto.
- 1.32 “Environmental Laws” means 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.

- 1.33** “Existing Financial Incentives” means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state or local law available as a result of the ownership and operation of the Generating Facilities or the output generated by the Generating Facilities (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.
- 1.34** “Expected Annual Contract Quantity” means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 8 [Expected Contract Quantity Form]. May also be referred to as the “Estimated Annual Production” in this Agreement.
- 1.35** “Expected Commercial Operation Date” means the date on which the Parties expect the Generating Facilities to achieve Commercial Operation, established in accordance with Article 3.
- 1.36** “Fair Market Value” (FMV) means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar industry would determine a photovoltaic or solar hot water 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.
- 1.37** “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.
- 1.38** “Force Majeure Event” has the meaning set forth in Article 8.
- 1.39** “Generating Facilities” means Seller’s electricity generating facilities as described in Exhibit 2 [Description of Generating Facilities], excluding the sites, land rights, and interests in land.
- 1.40** “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any tribal, municipality, township or county, or any 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.
- 1.41** “Hazardous Materials” means 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, by-products, or waste.

- 1.42** “Interconnection” means the interconnection of the Generating Facilities with the local electric utility, including construction, installation, operation, and maintenance of all Interconnection Facilities.
- 1.43** “Interconnection Agreement” means the agreement between Buyer and/or Seller and the Local Electric Utility, which set forth the terms and conditions for Interconnection of the Generating Facilities to the local electric utility.
- 1.44** “Interconnection Facilities” means all of the facilities installed for the purpose of interconnecting the Generating Facilities to the local electric utility, including transformers and associated equipment, relay and switching equipment and safety equipment.
- 1.45** “Investment Tax Credit” or “ITC” means the energy credit under Section 48 of the Internal Revenue Code.
- 1.46** “kWh” means one kilowatt of electricity supplied for one hour.
- 1.47** “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer at the applicable Site.
- 1.48** “Mechanical Completion” means when (i) installation of all necessary components and systems of the Generating Facilities (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 Generating Facilities) has been completed; (ii) the Generating Facilities are mechanically and electrically sound; and (iii) the Generating Facilities are ready for initial operation, adjustment, and testing.
- 1.49** “Meter” or “Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller and used to determine the amount of electricity generated by each Generating Facility and to record other related parameters required for the reporting of data to Seller.
- 1.50** “Metered Energy” means the amount of electricity measured at the Meter for each Generating Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.
- 1.51** “Monitoring System” means physical devices, data processing equipment and apparatus associated with real-time monitoring of the quantities and quality of Energy generated by each Generating Facility

- 1.52 “MW” means one megawatt of electric power.
- 1.53 “MWh” means one megawatt of electricity supplied for one hour.
- 1.54 “Outage” means a physical state in which all or a substantial portion of the Generating Facilities fails to provide Energy to the Delivery Point.
- 1.55 “Output” means (i) the electricity produced by the Generating Facilities and metered.
- 1.56 “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.57 “Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facilities.
- 1.58 “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.
- 1.59 “PPA” means the Power Purchase Agreement entered into by and between Buyer and Seller, and all exhibits, and schedules attached hereto and incorporated herein.
- 1.60 “Preliminary Requirements” has the meaning set forth in Article 3.
- 1.61 “Project Sites” means the real property, on which the Generating Facilities are to be built and located, as described in Exhibit 3.
- 1.62 “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 Arizona in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; 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 expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.
- 1.63 “PTC” means PV USA Test Conditions.
- 1.64 “Renewable Energy Credit” has the meaning set forth in the REST rules of the Arizona Corporation Commission as may be amended from time to time or as further defined or supplemented by applicable law.
- 1.65 “REST” means the Arizona Renewable Energy Standard and Tariff as adopted by the Arizona Corporation Commission in Decision No. 69127, issued November 14, 2006 with any amendments or modifications thereto.

- 1.66 “Seller” means, the entity that has executed this Agreement as of the date hereof and shall include Seller’s authorized agents, sellers and subcontractors.
- 1.67 “Seller’s Project Management Team” mean 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.
- 1.68 “Solar Generating System” means a solar hot water and/or Generating Facility.
- 1.69 “Solar Insolation” means the amount of solar kWh per square meter falling on a particular location.
- 1.70 “Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.
- 1.71 “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.72 “Local Electric Utility Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of the Local Electric Utility, as these may be amended from time to time.
- 1.73 “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.

Comment [AR7]: Customizable

ARTICLE 2: TERM

- 2.1 Term: The term of the Agreement shall commence on the Effective Date and shall continue for [insert duration] years from the Commercial Operation Date of the applicable Generating Facility (“Initial Term”), unless and until terminated earlier pursuant to the provisions of this Agreement. After the Initial Term, the Agreement may renew for additional five year terms (“Renewal Terms”), if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the current Term. The Parties shall confer and agree on a schedule for the Price, Escalation Rate, (if any) Early Termination Fees, Expected Annual Contract Quantity and termination and amendment procedure for

Comment [GA8]: SCN comment - Need to cover the question of timing for 2nd or 3rd renewals.

any Renewal Term. The remainder of the terms and conditions shall remain substantially the same for the Renewal Term as for the Initial Term. If Seller consents to renewal, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, the Agreement shall expire as of the last day of the current Term. No later than sixty 60 days after Seller provides such consent, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, 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 to renew. In the event Buyer does not provide such confirmation, the Agreement shall expire as of the last day of the current Term. Upon expiration of the Initial or Renewal Term, Seller shall cause the applicable Generating Facility to be removed from the Buyer's premises pursuant to Article 10.5(a).

2.2 Buyer's Exercise of Purchase Option: So long as a Buyer Default has not occurred, Buyer has the option to purchase the applicable Generating Facility for a purchase price (the "Buyout Price") equal to its fair market value, ("FMV"), at any time after the sixth anniversary of the Commercial Operation Date of the applicable Generating Facility. If Buyer chooses to exercise the purchase option, the following steps shall be followed by the Parties:

- a) Buyer shall provide Seller with [CUSTOMIZE] days written notice of its intent to purchase the applicable Generating Facility on a date certain. The date that is [at least 225] days after Buyer gives Seller its written notice of intent to purchase shall be referred to as 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 photovoltaic industry to determine the FMV as of the Buyout Date and request that the appraiser, within sixty (60) days, evaluate and determine the FMV of the applicable Generating Facility as of the Buyout Date and submit a report on the FMV to the Parties. The costs of the appraisal shall be shared equally between Buyer and Seller.
- c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the photovoltaic industry no later than sixty (60) days from the date of notice referred to in Article 2.2 (a). 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 jointly select a third nationally recognized independent, third-party appraiser with experience in the 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 will be asked to evaluate and determine the FMV of the applicable Generating Facility and submit their reports to both Parties. The appraiser's valuation that diverge the greatest from each of

Comment [GA9]: Customizable

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 applicable Generating Facility. If no such valuation can be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the applicable Generating 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 applicable Generating Facility, Buyer shall confirm to Seller in writing of its intent to proceed with its option to purchase the applicable Generating Facility at the FMV, as determined pursuant to this Article 2.2. In the event Buyer does not provide such written confirmation, the provisions of the 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 within 30 days execute all documents necessary to (A) cause title and ownership of the applicable Generating Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (B) assign all warranties for the applicable Generating Facility to Buyer. Buyer shall pay the FMV to Seller on or before the Buyout Date, in accordance with any previous written instructions delivered to Buyer by Seller for payments under the Agreement. Upon such execution of documents and payment of the FMV, as to the applicable Generating Facility, this Agreement shall terminate and Buyer shall own the applicable Generating Facility and all Environmental and Financial Attributes relating to the applicable Generating Facility. Payment of the FMV 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 Buyer's premises at no cost to Buyer.

2.3 Termination: In the event of termination by Buyer, except as specified otherwise in this Agreement (and specifically not including the following circumstances by way of example: (i) termination for either Party's default (Article 10); (ii) termination for Force Majeure (Article 8); and (iii) termination for non-appropriation (Section 8.1(d)), Buyer shall pay to Seller, as liquidated damages, the applicable Early Termination Fees set forth in Exhibit C, and Seller shall cause the applicable Generating Facility to be disconnected and removed from the Premises. Within one hundred and eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the applicable Generating Facility and shall remediate and restore the Premises to the condition preceding the installation of the applicable Generating Facility as set forth in Section 10.5, unless the parties agree otherwise.

- 2.4 Seller must maintain general liability coverage, as defined and explained more fully below, throughout the term of this agreement.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

- 3.1 All elements of engineering, construction and installation of the applicable Generating Facilities and compliance with all state, local and utility requirements are Seller's sole responsibility, provided that Buyer cooperates in good faith with Seller to satisfy the local and state requirements and those of the Local Electric Utility.
- 3.2 Seller shall provide services as described herein and pursuant to Exhibit 5 [Engineering and Construction Requirements].
- 3.3 Seller must comply with all insurance requirements as set forth in Exhibit 10 [Insurance Requirements].
- 3.4 Seller shall provide bi-weekly status reports throughout the design and construction phase, 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 Site Assessment and Planning.

Seller shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures and/or land on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any necessary applications to other agencies for the Project; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

3.7 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). Upon completion of this phase, Seller shall proceed with the installation & construction phase.

- a) Preliminary Requirements:
- (i) Seller must comply with all requirements set forth in Exhibit 5 [Engineering & Construction Requirements].
 - (ii) Within sixty (60) days from the Effective Date:

A. Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. Such Expected Commercial Operation Date shall be no later than the utility reservation deadline date if such a date exists or 365 days after the Effective Date.

B. Each Party shall furnish to the other current certificates evidencing that the insurance coverage required under this Agreement is being maintained.

(iii) Within ninety (90) days from the Effective Date, Seller must submit 65% engineering drawings and specifications for the Generating Facilities to Buyer for approval from the Buyer, which shall not be unreasonably withheld, conditioned or delayed

(iv) Within ninety (90) days from the Effective Date:

A. Seller must have obtained a financing commitment for construction of each applicable Generating Facility and submitted a signed term sheet as satisfactory proof of such financing commitment to the Buyer.

(v) Within one hundred and fifty days from the effective date:

A. 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 Generating Facilities.

B. Seller must provide a cost estimate for the decommissioning of the system at the time of its removal.

(vi) One hundred and eighty (180) days after the Effective Date for the applicable Generating Facility:

A. Seller must have obtained all necessary environmental approvals or permits for the applicable Generating Facility before construction begins.

3.8 Construction Phase

- a) Prior to the utility reservation deadline date or 365 days after the Effective Date, Seller shall obtain from the local electric utility an Interconnection Agreement and shall initiate operation of the Generating Facility.
- b) Seller will cause each System to be designed, engineered, installed and constructed substantially in accordance with Exhibit 5 of this Agreement and Applicable Law, including but not limited to, the payment of prevailing wages, if applicable. All construction of the applicable Generating Facilities, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent sellers with demonstrated competence and experience in the

construction of the photovoltaic systems, and duly licensed under the laws of the State of Arizona, pursuant to written contracts with such sellers. Prior to the commencement of construction on any applicable Generating 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 applicable Generating Facilities, which shall comply with all applicable construction codes. Buyer and Seller shall agree to mutually beneficial timing with regard to submittal of plans for construction, notice of approval, rejection or approval with conditions. Buyer shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Seller is adhering to the specifications provided for in Exhibit 5 to the Agreement.

- c) Seller must comply with all requirements set forth in applicable building and electrical codes and Exhibit 5.
- d) Seller shall provide to Buyer a construction schedule and safety plan. Seller shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Seller's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Buyer and Buyer's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Seller shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Buyer for conduct of business on the Site. Seller shall be responsible for all aspects of site security and shall notify Buyer if additional security measures only within the power of Buyer are required.
- e) Seller shall cause each applicable Generating Facility to be designed, installed and constructed in accordance with applicable law, with all requirements of this Agreement and pursuant to the final approved project design, and at Seller's sole cost. Upon completion of construction of each applicable Generating Facility, Seller shall verify that the system is delivering energy as stated in Section 4.3.
- f) Minimum Standards: Seller shall ensure that minimum standards are followed, including;
 - (i) All power generation and other electric equipment shall be UL listed for its use.
 - (ii) The Generating Facility must meet all applicable regulatory and environmental requirements

(iii) All material and construction shall conform to standards set out in Exhibit 5 [Engineering and Construction Requirements].

g) A Monitoring System shall be included for each Generating Facility as per Section 4.2

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 Article 3.7 with respect to any Generating Facility, Buyer may terminate this Agreement as to that Generating 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; provided, however that any such written notice of termination for non-compliance with Article 3.7, sections (a)(iii) – (a)(vi) shall be provided by Buyer to Seller prior to the Commencement of Work Date. The Buyer may extend deadlines at its option. If Buyer elects to terminate pursuant to this paragraph, Seller shall take all actions necessary to return the Buyer's premises to the condition Seller first encountered them, at no cost to the Buyer.

b) Seller's Rights to Terminate: In the event that any of the following events or circumstances occur within ninety (90) days after the Effective Date (or as specified below), Seller may (at its sole discretion) terminate the Agreement, subject to Articles 3.9(c) - (e), as to the applicable Generating Facility, in which case neither Party shall have any liability to the other Party as to the applicable Generating Facility:

(i) Seller determines that the Premises, as is, are insufficient to accommodate the applicable Generating Facility.

(ii) There exist site conditions at the Premises (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 applicable Generating Facility or would adversely affect the electricity production from the applicable Generating Facility as designed.

(iii) Financial incentives related to the REST, federal Investment Tax Credit (ITC) or other state or federal tax incentives change in such a way that could reasonably be expected to adversely affect the economics of the installation for Seller and its investors, including the Financing Parties.

(iv) Seller is unable, after making best efforts, to obtain financing for the applicable Generating Facility on terms and conditions satisfactory to it.

- (v) Seller has not received a fully executed (i) Grant of Access Right (Exhibit A), and (ii) a release or acknowledgement from any mortgagee of the Premises, if required by Seller's Financing Party, to establish the priority of its security interest in the applicable Generating Facility.
- (vi) Seller has reasonably determined that there has been a material adverse change in the rights of the Buyer to occupy the premises or the Seller to construct the applicable Generating Facility on the premises.
- (vii) Seller, after making best efforts to do so, has not obtained and interconnection agreement from the Local Electric Utility for energy generated by the applicable Generating Facility.
- (viii) Seller has reasonably determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the applicable Generating Facility.
- c) Remediation: If Seller wishes to exercise its termination rights listed in section 3.9(b) with regard to a specific Generating Facility, Seller shall take all actions necessary to return the Buyer's Premises where the applicable Generating Facility was to be installed to the condition the Seller first encountered it in.
- d) Seller's Project Documents: If Seller exercises its rights under section 3.9(b) for any Generating Facility, Seller shall provide to Buyer all calculations, documents, plans and reports related to the planning and installation of the applicable Generating Facility provided that Buyer shall indemnify and hold harmless Seller for any and all claims based on any person's use, consultation, or reliance on such calculations, documents, plans and reports related to the planning and installation of the applicable Generating Facility.
- e) 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 or other such time frame as agreed upon by the parties of such determination. Upon receiving such notice, Buyer shall have 45 days or other such time frame as agreed upon by the parties to provide a cure for the circumstance causing Seller to consider 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 or other such time frame as agreed upon by the parties to attempt to cure. The Buyer shall have the option, but not the obligation, to cure.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase and Sale

Commencing on the Commercial Operation Date and continuing throughout the Term, , 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 Delivered Energy in kWh multiplied by the applicable Contract Price for that time period as set forth in Exhibit 6 [Contract Price].

- a) Annual Escalation Adjustment [if applicable]. Commencing on the first anniversary date of the Commercial Operation Date, and every anniversary date thereafter during the Term, the applicable Contract Price shall be escalated to reflect the Annual Escalation Adjustment as set forth in Exhibit 6 [Contract Price].
- b) 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 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) Meter Reading and Communications Equipment. After Initial Synchronization, Seller shall, at its sole cost and expense, read, or cause to be read, the Meters monthly during the Term. Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services approved by Buyer necessary to allow remote reading of the Meters by Seller and Buyer. Seller shall apply verification, editing and estimation techniques to ensure that the meter data accurately represent actual Output and are in compliance with all applicable requirements of (i) the Local Electric Utility; (ii) the ACC and (iii) the Interconnection Agreement.
 - (iii) 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

Comment [m10]: SCN comment - not a requirement, but a suggested standard.

this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facilities for the purpose of verifying meters.

- (iv) Local Electric Utility Requirements. If and to the extent requested to do so by Buyer, Seller shall submit to the Local Electric Utility or allow the Local Electric Utility to retrieve, any meter data required by the Local Electric Utility related to each Generating Facility and associated with the provision of transmission or distribution for the Output of each Generating Facility in accordance with the Local Electric Utility Tariffs, and the Interconnection Agreement.
- c) Delivery Obligations.
 - (i) Beginning on the Commercial Operation Date for each applicable Generating Facility, such Facility shall produce not less than 95% of the applicable Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) as of the Effective Date during the Initial Term, measured on a rolling, two (2) year, cumulative basis, 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, (c) a Force Majeure Event or (d) acts or omissions of Buyer of any of its obligations hereunder, provided Buyer has received prior written notice from Seller of such acts or omissions. Subject to the terms and conditions of this Agreement, if as of any anniversary of the Commercial Operation Date of an applicable Generating Facility beginning on the second anniversary of such date, the actual output of such Generating Facility for the prior two (2) years (the "Actual System Output") does not equal or exceed the Expected Annual Contract Quantity for such two (2) year period, in its next invoice Seller shall credit Buyer an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for Commercially Available Local Electric Utility provided energy in the applicable market during such two (2) year period minus the average applicable PPA Rate hereunder for the period, multiplied by (ii) the difference between the Actual System Output for such two (2) year period and the Expected Annual Contract Quantity for such two (2) year period.
 - d) Excess Energy: Buyer shall agree to purchase all energy output at the Contract Price.

4.2 Monitoring System and Web Interface

- a) Seller shall install, maintain, own, and operate a Monitoring System and Web Interface for each Generating Facility as described more fully in Exhibit 7, Section 6.2.
- b) Display of output from Generating Facilities: At location of Buyer's choice, Seller will install a kiosk or other apparatus for viewing of the

electricity production by the general public. The details of this display will be mutually agreed upon by the parties. Buyer will provide an electrical outlet and an Internet connection at the site.

4.3 AC Power Rating Adjustment

- a) Seller shall ensure that each Generating Facility meets the Contract AC Power Rating. Within six months of the Commercial Operation Date, Seller shall perform and submit to Buyer the results of a PTC Rating analysis which shall consist of the following: performing Field Verification testing as defined in CSI Handbook Section 7. Seller shall provide results of such testing to Buyer. If the analysis demonstrates that an applicable Generating Facility has an AC Power Rating of less than ninety-five (95) percent of the Contract AC Power Rating, then Seller shall adjust the Base Contract Price as follows:

$$[A / B] \times C = D$$

Where:

A = the actual AC Power Rating (as demonstrated by the PTC rating analysis).

B = the Contract AC Power Rating

C = the Base Contract Price

D = the Adjusted Base Contract Price

The Adjusted Base Contract Price shall begin to apply on the first day of the first full month subsequent to the submission of the PTC rating analysis result to the Buyer. In no event shall the Adjusted Base Contract Price be greater than the Base Contract Price.

- b) Annual Analysis. At least once in every twelve (12) months beginning 30 days after the Commercial Date, other than the first Contract Year, Seller shall perform and submit to the Buyer the results of a PTC Rating analysis to be performed in the same manner as detailed in Article 4.3(a). Results of this testing, along with comparison of metered production and expected production for the period since previous testing, shall be provided to Buyer.
- c) Insolation. To the extent that (1) Buyer's actions or failure to honor its obligations under this Agreement or the Right of Access result in a reduction of the Insolation available to the Generating Facilities, and (2) this reduction in turn causes the actual AC Power Rating of the Generating Facility to be less than 90% of the Contract AC Power Rating, then the reductions in the Contract Price set forth in Articles (a) and (b) shall not apply. For purposes of this Article, "Insolation" shall mean Solar Insolation as defined in the Glossary.

Comment [GA11]: SCN comment - CSI Handbook is to be used as a suggested format for Field Verification Testing.

4.4 Delivery Point

- a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller shall be 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 shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.5 Environmental Attributes

- a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, titles 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 Base 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) Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Buyer an attestation of Environmental Attributes produced by the Generating Facilities and purchased by Buyer in the preceding calendar month. On or before the Commencement Anniversary of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to the Buyer an attestation of Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation shall be agreed to by the parties and may be updated or changed by Buyer as necessary to ensure that the Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- e) Documentation. At Buyer's option, the Parties, each at their own expense, shall execute all such documents and instruments in order to affect the

transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by any governmental or private Agency that any transfers of Environmental Attributes 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.

4.6 Tax Credits and Financial Incentives

- a) In connection with Seller's rights and interests in performance based incentive payments to be made under the Arizona REST after the Commercial Operation Date, Buyer agrees to cooperate with Seller, including signing authorizations needed by Seller, to obtain or transfer any such performance based incentives under Arizona law or ACC orders.
- b) Federal Solar Tax Credits: Claw Back Amounts
Buyer shall use its best efforts to cooperate with and assist Seller in Seller's application, operating and reporting requirements of and for the Generating Facility in order to qualify the Generating Facility and/or Seller for receipt of all available Federal Tax Credits ("FTC"). Seller shall pay to Buyer XX percent (XX %) of the FTC amounts received by Seller. In the event of Termination of this Agreement and/or shutdown of the Generating Facility by Buyer, Buyer shall be responsible for paying its pro rata share of the FTC amounts demanded to be returned by and to the Federal Government and/or other governmental authority ("Clawback Amounts"), and shall promptly pay back such Clawback Amounts.

Comment [AR12]: Customizable

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment

- a) Generally during the Term, on a monthly basis, Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer during the prior month, in accordance with Article 4. Such payment shall be 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. All amounts paid by Buyer to Seller shall be subject to audit by the Buyer.
- b) Payment. All payments shall be made on or before sixty (60) days after receipt of an undisputed invoice. Each Party shall make payments by electronic funds transfer or by other mutually agreeable method(s), to the account designated by the other Party. All undisputed payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, 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.

5.2 Allocation of Taxes and Possessory Interest Tax

- a) Delivery Point. Seller shall pay or cause to be paid all Taxes due under or by virtue of this Agreement or the sale and delivery of Output sold hereunder including but not limited to ad valorem, franchise or income taxes which are related to the sale of Output.
- b) Real Estate or Property Taxes. Seller shall pay or cause to be paid all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are now or hereafter assessed, levied, charged, confirmed or imposed by any Governmental Authority on Seller's Occupancy and use of the Property (or any portion or component thereof) or on Seller's ownership which are assessed as a result of the operation of Seller's Generating Facilities.

ARTICLE 6: REMOVAL OF GENERATING FACILITIES

6.1 Security for Removal of Generating Facilities

Seller shall provide Buyer a written estimate of the cost to remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility. One hundred and fifty (150) days after the Effective Date (See 3.7 (v)(2) . 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 one of the following forms of security for the cost to remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility: (i) a performance bond covering such cost, (ii) an investment or deposit account established with a financial institution reasonably satisfactory to Buyer, such approval of selection of financial institution not to unreasonably withheld, denied, conditioned, or delayed, requiring the signatures of both Buyer and Seller for all withdrawals, or (iii) a guaranty issued by a financial institution reasonably satisfactory to Buyer, such approval of the selected financial institution shall not unreasonably delay the installation of the project. Such security shall secure the costs remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility. Any funds remaining after the removal of the applicable Generating Facility and restoration of the applicable Site to its condition prior to the installation of the applicable Generating Facility or as otherwise agreed are the sole property of Seller, and Seller, in its sole discretion, shall determine which form of security to post to secure the cost to remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility or as otherwise agreed. In the event of a Seller Bankruptcy Event, Buyer shall have the right to use the applicable security and funds for the sole purpose of removal of the applicable Generating Facility and restoration of the

applicable Site to its condition prior to the installation of the applicable Generating Facility or as otherwise agreed; any remaining funds shall remain the property of the Seller or the Seller's Financing Parties, as applicable.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

- 7.1** Seller shall reimburse the Buyer for Buyer's payment of any rebate reservation fee within thirty (30) days of receipt of the Buyer's invoice for such payment.
- 7.2** Seller shall provide Buyer with an as-built plan set after project completion.
- 7.3** Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the Technical Requirements appended as Exhibit 4 [Technical and Warranty Requirements], Grant of Access Right, all Requirements of Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 4 [Technical and Warranty Requirements] for the equipment detailed in that Exhibit.
- 7.4** Milestones
- a) Seller shall diligently pursue all milestones established pursuant to Exhibit 7 [Operations Forecasts, Scheduling Protocols & Monitoring] 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 milestones for the development, financing and construction of the Generating Facilities must be achieved in a timely fashion. Seller shall strive to achieve the milestones mutually agreed to at the time of PPA execution by the Seller and Buyer.
 - b) **Progress Reports**
Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide regular progress reports as mutually agreed upon by Seller and Buyer concerning the progress towards completion of each 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, Seller shall 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 Mechanical Completion Inspection**
Seller shall notify Buyer when Mechanical Completion of each of the

Generating Facilities is achieved. At discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection of each of the Generating Facilities on a date, mutually agreeable to Seller and Buyer, within ten (10) Business Days of Seller's notification of Mechanical Completion of the applicable Generating 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 shall complete, correct, or otherwise address 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 Seller asserts that all punch list items have been resolved. Seller shall strive to resolve all punch list items prior to the Commercial Operation Date of the Generating Facilities 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 six (6) months. The extension provided for in this Article 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 the Agreement.

- a) Maintenance, Audit and Inspection of Records
Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and the lease, 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.

7.6 Insurance

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 10 [Insurance Requirements] for the term of this Agreement.

7.7 Commissioning Tests

Seller shall comply with all applicable 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 Commercial Operation Date, including any relevant data demonstrating that 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.

7.8 Obligation to Interconnect

Seller shall be solely responsible for Interconnection of the Generating Facility to the Local Electric Utility System. Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Local Electric Utility as needed to enable Seller to transmit Energy to the Delivery Points. Seller shall be responsible for all costs under the Interconnection Agreement and any other agreements with the Local Electric Utility including, but not limited to, the costs of any upgrades to the Local Electric Utility System associated with the Interconnection of the Generating Facilities. Seller shall, at its own cost and expense, maintain the Interconnection Facilities including metering facilities.

7.9 Facility Conformance to Buyer Specifications

Seller shall assure that each Generating Facility remains in conformance with the most recent version of the as-built drawings approved by the Buyer; all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Generating 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. If Seller fails to correct or address issue(s) identified by Buyer, Buyer shall have the right to receive a Delay Correction payment from Seller. Delay Correction Payments shall be 75% of the Contract Price multiplied by the expected Contract Quantity per day, beginning twenty one (21) Days after receipt of notification or ten (10) Days after the agreed upon date for resolution, whichever is later, and continuing for each day that the non-conformance remains uncorrected. Any such Delay Correction Payments shall be in addition to all other rights and remedies available to Buyer under this Agreement, in law or in equity.

7.10 Delay Correction Payments

So long as Seller is paying such Delay Correction Payments as described above on a weekly basis, Buyer shall not be permitted to declare Seller in default of this Agreement or otherwise terminate this Agreement, provided that in no event, shall the extension from such Delay Correction Payment damages exceed twenty (20) Business Days. The Parties agree that Buyer will suffer damages if the corrections are not timely made, and that the Buyer's actual damages in the event that corrections are delayed would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Correction Payments constitute an appropriate remedy. The Delay correction Payments do not constitute a forfeiture or penalty of any kind.

7.11 Coordination with the Local Electric Utility and prudent practices 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 Generating Facilities start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit 7 [Operations Forecasts, Scheduling Protocols & Monitoring].

7.12 Seller shall use commercially reasonable efforts to minimize the number and duration of outages during periods when the Generating Facilities otherwise would be able to produce Energy. Planned Outages shall be limited to no more than five (5) calendar days per Contract Year. Buyer may request up to 5 days per year of additional Planned Outages for repairs or for other reasons. Seller shall be 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 the Buyer in accordance with Exhibit 7 [Operations Forecasts, Scheduling Protocols & Monitoring].

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 this information promptly to the other Party.

7.14 Modifications to the Generating Facilities After Their Applicable Commercial Operation Dates

After the Commercial Operation Dates of the applicable Generating Facilities, Seller shall have no right to change, replace or alter the applicable Generating Facilities nor attach fixtures or erect additions or structures in or upon the applicable Generating Facilities (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 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 Generating Facilities 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, but only to the extent that:
 - (i) Such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;
 - (ii) Such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
 - (iii) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

- b) “Force Majeure Event” may include, subject to this Article:
- (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) Utility Transmission 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; and
 - (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves.
- 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) failure or delay in the granting of Permits;
 - (iv) failures or delays by the Local Electric Utility or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - (v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a “Force Majeure” under the ISO Tariff; or
 - (vi) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event.
- d) Notwithstanding anything to the contrary, a Force Majeure event shall include a "budget non-appropriation event" in which the Buyer's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Buyer. During the continuation of a budget non-appropriation event as defined above, if the Buyer does not otherwise have other funds available to make payments otherwise due on this Agreement, the Buyer shall not be obligated to pay for (and the Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Buyer agrees that it shall use its best

efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Buyer) may terminate this Agreement.

8.2 Conditions

- a) In addition to the conditions set forth in Article 8.1(a), a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:
- (i) provides prompt notice of such Force Majeure Event 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) provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 Force Majeure Event continuing for eighty (80) days

If such Force Majeure Event results in a Generating 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 Generating Facility.

8.4 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force Majeure event, the other Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice after the Force Majeure Event. In the event that a Generating Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and the Agreement as it relates to that Generating Facility is thereby terminated, Seller shall be responsible for removing the

applicable Generating Facility and restoring the Premises where the applicable Generating Facility was installed to its pre-installation condition within ninety (90) days after provision of written notice. Seller agrees to work in good faith to keep Buyer informed of its plans to address the Force Majeure Event.

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 within fifteen (15) days after the date that a Party gives written notice of such dispute to the other Party except to the extent that the 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 the 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 whom they choose together.
- 9.2** Notwithstanding anything to this contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Events of Default

The following is a list of non-exclusive events of default (collectively “Events of Default”). They shall constitute a Seller’s default or Buyer’s default as specified below:

- a) Seller Schedules and/or delivers to Buyer, without Buyer’s consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement (Seller default); or
- b) If a Generating Facility does not provide 80% of the Estimated Annual Production as specified in Exhibit 8 for two (2) consecutive years after adjustments for weather, acts and omissions of third parties issues out of Seller’s control, and Force Majeure Events (Seller default); or
- c) Seller sells or transfers Output to any Person other than Buyer (Seller default); or
- d) Either Party shall have failed to maintain any insurance required pursuant to this Agreement (Seller or Buyer default depending on circumstances); or
- e) Seller shall have failed to achieve Commercial Operation Date by the Expected Commercial Operation Date as such deadline is established

pursuant to Article 3 (Seller default); or

- f) Seller shall have failed to maintain continuous operations at any Project Site for any three hundred and sixty-five (365) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Project Site (Seller default); or
- g) 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 (Seller or Buyer default depending on circumstances); or
- h) The sequestration or attachment of or execution or other levy on a Party's interest in this Agreement or the Premises 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 (Seller or Buyer default depending on circumstances); or
- i) 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 Premises or on the Site (Seller or Buyer default depending on circumstances); or
- j) Any lien shall be filed against the Premises or against one or more of the Generating Facilities because of any act or omission of a Party, and shall not be discharged or contested by such Party in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by the other Party (Seller or Buyer default depending on circumstances).

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 the Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount; and
 - (iii) Seller breaches any material term of the 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.
- 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 the Agreement and exercise any other remedy it may have at law or equity or under the 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 – which Seller shall have the obligation to provide 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 shall be 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 one or more Generating Facilities from the Premises of the Buyer. If Buyer makes such election, Seller shall be responsible for removing the applicable Generating Facility at its own cost and restoring the site where the applicable Generating Facility was installed to its pre-installation condition, within ninety (90) days of provision of written notice.
- c) No Early Termination Fee. Article 2.2 of the Agreement shall not apply to any termination of the Agreement by Buyer pursuant to this Article 10.

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 forty-five (45) days after amount is due; and
 - (iii) Buyer breaches any material term of the 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.

- 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 the Agreement.

10.4 Limitation of Liabilities

- a) Except as otherwise specifically and expressly provided in this Agreement, 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 customers 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).

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 the Agreement as to the applicable Generating Facility for any reason other than the exercise of Buyer's purchase option pursuant to Section 2.2, Seller shall disconnect and remove the applicable Generating Facility from the Buyer's premises and shall remediate and restore the Buyer's premises to the condition preceding the installation of the Generating Facility at no cost to the Buyer. Within one hundred eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the applicable Generating Facility and shall remediate and restore the Premises to the condition preceding the installation of the applicable Generating Facility. If the Generating 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 Generating Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer.
- 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 Generating Facilities and remediate premises
- (v) Obligations (if any) to repair damage caused by either Party (13.26)
- (vi) Obligations to retain records and provide access to same (13.27)
- (vii) Restriction regarding use of Buyer's name for commercial purposes (13.31)
- (viii) This provision, section 10.5.

10.6 Indemnification and Assumption of Risk

- a) Up to and including the Commercial Operation Date, the Seller shall indemnify, defend, and hold harmless the Buyer, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the Buyer to the extent caused by such negligence or willful misconduct of Buyer's employed personnel.
- b) After the Commercial Operation Date, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party, its employees, subcontractors or agents. If an Indemnified Party determines that it is entitled to defense and indemnification under this Article, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such party's prior written consent.

- 10.7 Seller's Financing Parties' Right to Operate in the Event of Seller's Default**
 If (i) Seller fails to achieve (A) the Commercial Operation Date set forth in the Milestones, or (B) a revised estimated Commercial Operation Date that has received written approval by the Buyer, or (ii) an Event of Default under Article 10 occurs, then the Seller's Financing Parties or their designee may, but shall not be obligated to, step-in and assume operational control from Seller of each applicable Generating Facility, if any. The Seller's Financing Parties, their employees, contractors and designees shall have the same rights of access to the applicable Generating Facility as the Seller to operate the Generating Facility. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to the Financing Parties as a result of the Financing Parties' operation of, or election not to operate, the applicable Generating Facility, if any.

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 [redacted] [insert state where incorporated or registered] limited liability company, 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

Comment [AR13]: Customizable.

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 the Agreement.
- b) Seller represents, warrants and covenants that any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Seller gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to Buyer by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.
- c) Seller expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the Buyer, in compliance with all applicable federal, state and local laws and regulations.
- d) Seller warrants that all services shall strictly conform to the Buyer's requirements and standards.
- e) During the provision of goods and services, Seller may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Seller's standard warranties or other rights and warranties that the Buyer may have or obtain.
- f) Seller covenants to maintain and repair Project Sites if such maintenance and repairs are necessary as a 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 Facilities to be installed and operated in accordance with all Requirements of Law.

ARTICLE 12: ASSIGNMENT AND FINANCING

12.1 Assignment By Seller

Seller shall not sell, transfer or assign (collectively, an "Assignment") Seller's rights or obligations under the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Seller may (i) assign the Agreement to an Affiliate of Seller provided that such Affiliate has expertise in the management of photovoltaic assets and economic strength which is equal to or greater than that of Seller; (ii) assign the Agreement in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Seller and (iii) assign the Agreement to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the applicable Generating Facility (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). The Financing Parties shall have the right but not the obligation to assume the Agreement in the event of a Seller Default. For avoidance of doubt, in the event that a Financing Party exercises its right to assume the Agreement in the event of a Seller Default, such financing Party shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under the Agreement, and thereafter shall become the successor-in-interest to Seller under this Agreement. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests, and obligations under the Agreement, it shall so assume in writing. Where Seller is not required to

get prior written consent of Buyer, Seller shall provide prior written notice of assignment except for any assignments to Financing Parties. Any Financing Party shall be an intended third-party beneficiary of this Section 12.1. Any assignment by Seller without any required prior written consent of Buyer shall not release Seller of its obligations hereunder.

12.2 Assignment by Buyer

Buyer shall not assign the Agreement or any interest therein, without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignee assumes in writing the obligations of Buyer hereunder. Any assignment by Buyer without the prior written consent of Seller shall not release Buyer of its obligations hereunder. In the event that Buyer sells or otherwise transfers the Premises and opts not to relocate the applicable Generating Facility, Buyer may either (1) terminate the Agreement as to the applicable Generating Facility and pay to Seller the FMV of the applicable Generating Facility or (2) shall require the purchaser or transferee, as the case may be, to assume its obligations under the Agreement pursuant to an assumption agreement reasonably acceptable to Seller; provided that such purchaser or transferee has delivered documentation reasonably satisfactory to Seller evidencing creditworthiness equal to or greater than the Buyer.

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 when sent by registered or certified mail, return receipt requested; when 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 D [Notice Information].

Seller: As listed in Exhibit D [Notice Information].

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 county ordinances, 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 the respective charges and fees in connection therewith.

13.3 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.

13.4 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 the Agreement.

13.5 No Third Party Beneficiary

Except as to those 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 be construed to create rights in, or to grant remedies to, any third party.

13.6 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.

13.7 Governing Law

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

13.8 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 Arizona in the County of [add appropriate county] or if federal jurisdiction is appropriate, exclusively in the United States District Court in the District of Arizona.

Comment [AR14]: Customizable

13.9 Nature of Relationship

- a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The 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.

13.10 Subcontracting

All subcontractors shall be subject to background checks and Seller shall notify Buyer of its intent to use a subcontractor prior to such subcontractor's entry on the Premises. 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.

13.11 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 the 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 the 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.

13.12 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.

13.13 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.

13.14 Cooperation

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

13.15 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 estoppel certificates confirming the status of the Agreement and acknowledging that Seller has no rights in the Generating Facilities. 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 estoppel certificates which recognize the rights of Seller, Seller's Financing Parties, and Seller and Seller's Financing Parties' assignees and successors under this Agreement.

13.16 Time of the Essence

Time is of the essence in performance by the Parties.

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 and the Lease, 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, codes, and regulations including all policies concerning nondiscrimination and equal opportunity in contracting and employment.

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 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 US or Arizona Occupational Safety and Health Administration, 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 the 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 by Seller

Any and all damages caused by Seller's negligence or operations shall be repaired, replaced or reimbursed by Seller at no charge to the Buyer. Repairs and replacements shall be completed with seventy-two (72) hours of the incident unless the Buyer requests or agrees to an extension or another time frame. 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 Seller's vehicles or during performance shall be responsibility of the Seller. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer's Director of Facilities [insert proper name here] Department. Damage observed by Seller, whether or not resulting from Seller's operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer's best interests.

13.27 Access and Retention of Records and Provision of Reports

Seller shall maintain financial records adequate to show that Buyer funds paid were used for purposes consistent with the terms of the contract between Seller and Buyer. Records shall be maintained during the terms of the Agreement and for a period of three (3) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

13.28 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.

13.29 Debarment

Seller represents and warrants that it, its employees, Sellers, or agents are not suspended, debarred, or excluded from, or ineligible for, receiving Federal or state funds. Seller must within thirty (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.

Comment [GA15]: SCN comment - Check with Procurement

13.30 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. The Buyer shall 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. The Buyer and its agencies and divisions, including, has no obligation to defend or undertake the defense on behalf of the Seller or its heirs, successors or assigns.

13.31 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.

13.32 Account Manager

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

For Seller:

By: _____
Name: _____

Title: _____

For Buyer:

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit A – Grant of Access Rights
Exhibit B – Certain Agreements for the Benefit of Financing Parties
Exhibit C – Early Termination
Exhibit D – Notice Information

Exhibit 1 – Buyout Payment Form
Exhibit 2 – Sites Descriptions of Generating Facilities (Legal & Narrative)
Exhibit 3 – Description of Generating Facilities (Pictures & Diagrams)
Exhibit 4 – Technical and Warranty Requirements
Exhibit 5 – Engineering and Construction Requirements
Exhibit 6 – Contract Price
Exhibit 7 – Operations Forecasts, Scheduling Protocols & Monitoring
Exhibit 8 – Expected Contract Quantity Form
Exhibit 9 – Form of Attestation
Exhibit 10 – Insurance Requirements
Exhibit 11 – Cash Flow Tables Showing Value of Solar

NOTE: FOR SOLAR WATER HEATING ONLY PPA'S, SOME OF THESE EXHIBITS WILL
NEED TO BE DIFFERENT, INCLUDING EXHIBITS 6 & 8

NOTE: Exhibits 4, 5, 9, and 10 are included as examples of standard practices in some communities. They should be deleted or customized per the city's specific requirements and procedures. Exhibit 3 should include pictures and description of the actual facilities, not the example used in this document.

Exhibit A

Grant of Access Rights

Re: Proposed Solar Power Generating Facility located at _____
(the “Sites”).

Buyer hereby grant to Seller and to Seller’s agents, employees, contractors and subcontractors throughout the Term of this Agreement, and for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days, to initially construct and later to remove the applicable Generating Facilities and restore the Premises pursuant to this Agreement, commercial access rights which are irrevocable during the Term of the Agreement (the “Access Rights”), for the installation, operation, and maintenance of the applicable Generating Facility or Generating Facilities, including commercially reasonable access to, on, over, under and across the Premises 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 Generating Facility or Generating Facilities or the Premises. It is further acknowledged and agreed that:

1. The Generating Facilities are the personal property of Seller, and will not become the property (personal or otherwise) of Buyer upon installation of the Generating Facilities at the applicable Premises. Each Generating Facility is more particularly described in Exhibit 2.
2. The Generating Facilities shall not be considered a fixture. Accordingly, Buyer hereby grants Seller and any Financing Party the right to file any UCC-1 financing statement or fixture filing that confirms its interest in the applicable Generating Facilities.
3. Seller or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under the Agreement. Buyer may not charge Seller any rent for such right to access the Premises.
4. The Financing Parties have a first priority perfected security interest in the applicable Generating Facilities. The Financing Parties are intended third party beneficiaries of Buyer’s agreements in this Grant of Access Rights.
5. During the Term, Seller’s access rights are preserved and Buyer shall not interfere with or permit any third party to interfere with such rights or access. The Access Rights granted hereunder shall be irrevocable during the Term of the Agreement, except upon expiration or earlier termination of the Agreement, in which case it shall only be revocable as it relates to the applicable Generating Facilities. Seller shall have access to the Premises beyond the Term for the purpose of removing the applicable Generating Facilities, for a reasonable period after the Term, but in no case later than one hundred and eighty (180) calendar days.
6. Upon any rejection or other termination of the Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall execute a new grant of access rights in favor of the Financing Parties (or their designees) on substantially the same terms as this Grant of Access Rights.
7. Buyer will not take any action inconsistent with the foregoing.

Acknowledged and agreed by:

By:

By: _____

Name:

Title:

By: _____

Name:

Title:

Exhibit B

Certain Agreements for the Benefit of the Financing Parties

Buyer acknowledges that Seller will be financing the installation of the applicable Generating Facilities either through a lessor, lender or with financing accommodations from one or more financial institutions and that Seller may sell or assign the Generating Facilities or may secure Seller's obligations by, among other collateral, a pledge or collateral assignment of the Agreement and a first security interest in the Generating Facilities. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Seller has notified Buyer in writing, Buyer agrees as follows, notwithstanding any contrary term of the Agreement:

- (a) **Consent to Collateral Assignment.** Buyer consents to either the sale or conveyance to a lessor or the collateral assignment by Seller to any Financing Party, of Seller's right, title and interest in and to the Agreement.
- (b) **Notices of Default.** Buyer will deliver to each Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Buyer under the Agreement, inclusive of a reasonable description of Seller default. No such notice will be effective absent delivery to all Financing Parties. Within one hundred and twenty (120) days of Seller achieving Commercial Operation of each Site's solar system, Seller shall provide Buyer with each Financing Party's name, address, telephone, and facsimile numbers.
- (c) **Non-Collusion; Termination.** Buyer and Seller shall not collude to mutually agree to terminate any applicable Agreement without the written consent of all Financing Parties.
- (d) **Rights Upon Event of Default.** The Financing Parties, as collateral assignees, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under the Agreement in accordance with the terms hereof and only in the event of Seller's or Buyer's default. The Financing Parties shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreement and the applicable Generating Facilities.

The Financing Parties shall have the right, but not the obligation, to pay all sums due under the Agreements and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of the Agreement. Nothing herein requires the Financing Parties to cure any default of Seller under the Agreements or (unless the Financing Parties have succeeded to Seller's interests) to perform any act, duty or obligation of Seller under the Agreements, but Buyer hereby gives the Financing Parties the option to do so.

Upon the exercise of remedies under the Security Interest, including any sale thereof by any Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Parties (or any assignee of the Financing Parties) in lieu thereof, the Financing Parties shall give notice to Buyer of the transfer or assignment of the Agreements. Any such exercise of remedies shall not constitute a default hereunder.

Upon any rejection or other termination of the Agreements pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall enter into a new

agreement with the Financing Parties or any assignee thereof having the same terms and conditions as the Agreements.

(e) Right to Cure. Buyer will not exercise any right to terminate or suspend the Agreements 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 the Agreements, 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 thirty (30) days after such notice or (if longer) the periods provided for in the Agreements. The Parties' respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default cannot reasonably be cured by any Financing Party within such period and any Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

If the Financing Parties (including any purchaser or transferee), pursuant to an exercise of remedies, shall acquire title to or control of Seller's assets and shall, within the time periods described in Subsection (d), cure all defaults under any Agreement existing as of the date of such change in title or control in the manner required by the Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under such Agreement, and such Agreement shall continue in full force and effect.

Acknowledged and agreed by:

By:

By: _____

Name:

Title:

By: _____

Name:

Title:

Exhibit C

The Early Termination Fee shall be calculated in accordance with the following:

:

Early Termination Occurs in Year [of System Term]:	Column 1 Early Termination Fee where Buyer does <u>not</u> take Title to the System (\$/Wdc including costs of removal)
1*	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Purchase Date Occurs on the 91st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Buyer takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
	--
	--
	--
	--
	--
6 th Anniversary	
7 th Anniversary	
8 th Anniversary	
9 th Anniversary	
10 th Anniversary	
11 th Anniversary	
12 th Anniversary	
13 th Anniversary	
14 th Anniversary	
15 th Anniversary	
16 th Anniversary	
17 th Anniversary	
18 th Anniversary	
19 th Anniversary	
20 th Anniversary	

Exhibit D – Notice Information

Buyer: _____

Seller: _____

Telephone:

Telephone:

Facsimile:

Facsimile:

Email:

Email:

With a copy to

Financing Parties:

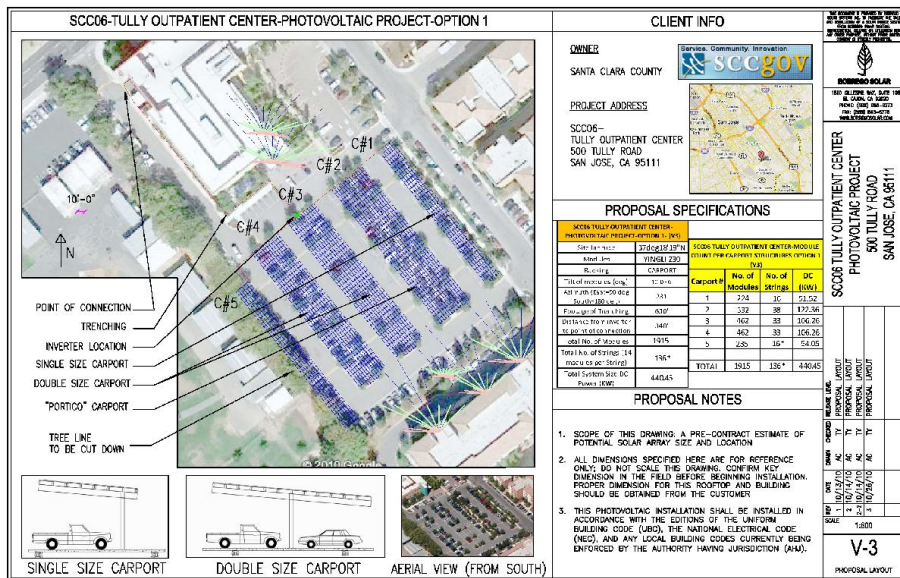
Exhibit 1
Buyout Payment Form

Exhibit 2
Site Descriptions

Site Description [Insert legal and other description of Generating Facility Site] :

Exhibit 3
Description of Applicable Generating Facilities

Insert pictures or diagram of Generating Facility including AC Power Rating-EXAMPLE ONLY!!!REMOVE BEFORE USE OF THIS DOCUMENT!!!





SCC-GILROY CLINIC PHOTOVOLTAIC PROJECT

CLIENT INFO

OWNER
 SANTA CLARA COUNTY
 GILROY CLINIC
PROJECT ADDRESS
 7475 CAMINO ARROYO
 GILROY, CA 95020



PROPOSAL SPECIFICATIONS

SCC-GILROY CLINIC PHOTOVOLTAIC PROJECT-V1			
Site latitude	37.011 N	No. of systems	12
Location	YINBUJ 290	Total No. of modules	3108
Scaling	CA3639C5	Total No. of inverters	222
Tilt of modules (deg)	100E5	CA#1 38400W	CA#2 72000W
AC output	54.0kW	CA#3 72000W	CA#4 72000W
DC output	147.0kW	CA#5 72000W	CA#6 72000W
DC output	147.0kW	CA#7 72000W	CA#8 72000W
DC output	147.0kW	CA#9 72000W	CA#10 72000W
DC output	147.0kW	CA#11 72000W	CA#12 72000W
Total length	440	Total System Size (KW)	714.0kW

PROPOSAL NOTES

- SCOPE OF THIS DRAWING: A PRELIMINARY ESTIMATE OF POTENTIAL SOLAR ARRAY SIZE AND LOCATION.
- ALL DIMENSIONS SHOWN ARE FOR REFERENCE ONLY. DO NOT CONSIDER THIS DRAWING AS A FINAL DESIGN. THE ROOFTOP AND BUILDING SHOULD BE OBTAINED FROM THE CUSTOMER.
- THIS PHOTOVOLTAIC INSTALLATION SHALL BE INSTALLED IN ACCORDANCE WITH THE EXISTING OF THE LINDSEY BUILDING CODE (LBC), THE NATIONAL ELECTRICAL CODE (NEC), AND ANY LOCAL ORDINANCES, REGULATIONS, AND STANDARDS ENFORCED BY THE APPLICABLE JURISDICTION (JURIS).

SCC-GILROY CLINIC
 7475 CAMINO ARROYO
 GILROY CA 95020

DATE	12/08/10	BY	AC	CHECKED	TV	REVISION LEVEL	PROPOSAL LAYOUT
REV	1						

SCALE: 1"=40'-0"

PV-1

PROPOSAL LAYOUT

Exhibit 4
Technical and Warranty Requirements

1. General Technical Requirements

In an effort to assure reliability, quality, and longevity of the systems, and to establish a minimum quality level whereby the City would consider a buyout after ten (10) years, the City provides the following general technical requirements and product specifications to which the Seller shall comply. These are in addition to any standards found in City standards or other City documents.

Comment [AU16]: Customizable

A. Structural responsibility:

All structures, including array structures, shall be designed to resist dead, live, plus wind and seismic loads for the area. Thermal loads caused by expected fluctuations of component and ambient temperatures must be combined with all the above load combinations. Structural adequacy of buildings, roofs, or structures impacted by the addition of the solar system, shall be the responsibility of the seller. These calculations must be stamped and approved by a registered professional engineer with appropriate experience and submitted to the City as part of the Preliminary Requirements.

All PV and solar hot water system components must be built such that the structure complies with applicable City of XXXX Building Code and wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7). The structure must be able to withstand design wind speeds of at least 90 mph (3-second gusts). "Withstand" means no-damage and power output can continue at wind speeds less than 90 mph. The minimum no-damage, no power interruption design earthquake load and frequency shall be consistent with Seismic Zone 2, the applicable seismic standard for the area.

Comment [AR17]: Customizable

Comment [AR18]: Customizable

The parking area PV-support structures at Project sites shall be constructed as elevated solar support structures. The PV support system design must be coordinated with the existing parking layout on the structure. This may include a variety of canopy configurations (single aisle, double aisle, single column, cantilever design, etc) so as to minimize column obstructions with vehicular traffic and allow for maximum flexibility of space configurations. The elevated PV system layout must also accommodate Fire Department access and fire protection requirements.

Sellers shall be expected to comply with and anticipate the necessity to move or remove/replace roof-mounted solar PV systems once during the term of the contract, to allow for roof maintenance and/or replacement. This time period shall not exceed twenty (20) days and shall be coordinated to occur during winter months. If roofing takes longer than twenty (20) days, Buyer agrees to pay Seller the value of all lost revenue and RECs. All equipment, rentals, and materials will be cost plus 15% overhead and profit which will be paid by Buyer if duration exceeds the 20 calendar days or additional removals are required for reasons not caused by Seller.

B. Corrosion Resistance:

All structural components, including array structures, shall be painted, coated, or otherwise protected in a manner commensurate with the minimum twenty (20) year design life. Particular attention shall be given to the prevention of corrosion.

C. Codes and Standards:

All systems must be installed in accordance with all applicable requirements of codes adopted by the jurisdiction having authority and any and all city, county, tribal, state or federal codes, rules, regulations, ordinances, industry standards, jurisdictional standards, etc., which are applicable to solar projects.

D. PV Modules:

The PV Modules shall be UL 1703 listed, IEEE 1262 approved, and currently on the California Energy Commission (CEC) list of Eligible Renewable Equipment. In addition, all modules must have a minimum twenty (20) year warranty.

The Seller shall create a uniform appearance of the arrays. Spacing between individual modules and panels should be uniform. As much as possible, all mechanical hardware, conduit, junction boxes, and other equipment should be concealed beneath and/or behind the array when practical or required by applicable code.

E. Inverters/Isolation Transformer Combination Equipment:

In addition to being listed to UL 1741, inverters must also be unused and of recent manufacture and listed on the CEC current list of Eligible Renewable Equipment. Inverters must be sized to properly accommodate the DC input from the PV panels under all expected electrical, thermal, and other operational conditions and be designed for normal unattended operation.

The inverter must contain all self-protection features as stated in IEEE 929 including over and under voltage and frequency safeguards. An integral, anti-islanding protection scheme shall prevent the inverter from feeding power to the utility grid in the event of a utility outage. Inverter efficiency shall be rated at greater than or equal to 95%. The inverter shall include provisions for automatic operation including start up, shut down, self-diagnosis, and fault detection. Inverter shut off and reset toggle switches shall be provided. The DC array capacity to AC inverter capacity shall not exceed 115%. AC current distortion at rated power must be less than 5% Total Harmonic Distortion (THD) at all power output loadings. The inverters shall be interconnected to the customer's electrical panel in a manner that meets code and utility requirements. The inverters shall be housed in an appropriately shaded, waterproof and dust proof enclosure, or in a building. The inverters shall have provisions to prevent moisture condensation and entrance of rodents into air intake or exhaust ports. The inverter enclosure shall take into consideration the effects of direct sunlight and extreme weather such that the inverters are appropriately shielded from the elements. The inverter enclosure should be well ventilated so that the inverters operate safely at or near their maximum power point (MPP).

The following specific codes and standards shall apply to the inverter installation and operation:

- ANSI /IEEE 519 1981 Guide for Harmonic Control of Static Power Controllers.
- ANSI Test Code C57, 12.91 for Factory Tests of Dry Type Transformers.

F. Balance of System (BOS) Components:

The system shall be comprised of UL (or approved equal) listed components, installed in a manner consistent with their approvals, where these components are available.

G. Combiner Boxes;

Combiner boxes will be UL listed as appropriate or Listed to 1741 or equal.

H. Circuit Disconnects Switches and Enclosures:

Enclosures shall be surface mounted type, unless otherwise noted, and of NEMA type 3R, waterproof.

Disconnect Switches shall be DC or AC rated, as appropriate, with appropriate ampere ratings as required. They shall be UL listed and of NEMA type 3R, waterproof, meet proper AIC requirements, be correctly rated for DC or AC operation, as appropriate, and be “load-break” capable.

Disconnects and enclosures must be properly supported and braced to Seismic zone requirements, where required.

When used for disconnecting, disconnects for branch circuit protection shall be located per code.

Switchgear must be accessible. The location of the disconnect switch may be acceptable as long as it is accessible 24/7 and approved by the local electric utility.

I. Fuses:

All low voltage fuses for disconnects must be current limiting UL class J, RK1, or RK5 and of the appropriate voltage, delay or non delay characteristic, and current rating to provide both complete short circuit and overload protection per NEC sections regarding component protection.

Fuses in the combiner boxes protecting PV string branch circuits must be UL class CC midget type, be in “shock-safe” type fuse holders “touch safe”, providing load break disconnect capabilities when changing fuses. Midget fuses and fuse holders used in these circuits must be fully DC rated and adequate DC short circuits withstand capability must be provided for all power situations including “back-fed” conditions.

All fuses and other protective devices and holders must be engineered to safely protect system components under “worst case” expected field conditions including temperature extremes.

PV panel strings must be individually protected from short circuit conditions that may originate within the panels themselves.

J. Wiring and Connectors:

Wire shall be copper and sizes referred to on the Seller’s drawings must refer to copper wire sizes.

For medium voltage conductors, splices, and other related items, please refer to utility specifications.

Installation of copper wires, cables, and connection devices shall be in accordance with the manufacturer's instructions and applicable codes. Cables must not be bent to a smaller radius than is recommended by the manufacturer.

Voltage drop must be limited to 2% on main AC circuit and 3% on DC circuits, including losses in conductors and through all fuses, blocking diodes, and termination points.

K. Raceways:

Steel Conduit System shall meet the following specifications:

1. UL Listed:

The galvanized rigid steel conduit must be UL Listed. All conduit, fittings, and accessories must be new, unused material. Applicable UL standards may include: UL 6 Standard for Safety, Rigid Metal Conduit, UL 514B Standard for Safety, Fittings for Conduit and Outlet Boxes. EMT is acceptable.

2. The conduit shall be hot dip galvanized inside and out with hot galvanized threads.

L. Connections to Existing Circuit Breakers:

The appropriate circuit breakers, with the required AIC rating shall be utilized and shall be noted on the one line diagram.

The Seller shall supply a step-up transformer to match the voltage of the local utility distribution system if required. The step-up transformer shall be compatible with utility standards for voltage, phasing and grounding. This transformer shall be housed in the dust-tight and rain-tight enclosure. It may be dry type or liquid-filled type. For oil filled transformers, the PV Seller shall provide an adequate oil containment system. PCBs shall not be permitted.

The step-up transformer shall include an automatic positive load-breaking means of disconnect (e.g., switch, circuit breaker, etc.) on the high side. The disconnect means shall be provided to disconnect all phases simultaneously.

M. Grounding:

Provide driven ground rod or equal per code when specified and provide green equipment ground conductors sized in accordance with applicable NEC on main AC power circuit and DC collector circuits. If required by Code, ground rods shall be copper clad steel 3/4 inch by 10 feet unless otherwise indicated on one line diagram. Appropriate tie in and grounding of the entire PV system, including roof-mounted components, shall be per NEC-250 requirements.

N. Operational Identification and Warnings:

Project Sign:

Sellers shall install signs per applicable NEC and Local Electric Utility rules for instruction or warning identifying that a solar PV system is operational on the premises at appropriate locations and that there are potentially multiple power sources on the premises.

O. Signage:

All signage shall be per applicable codes.

2. General Documentation Requirements

The Seller shall design and engineer its solar PV or hot water system(s) at the Project sites to maximize the solar energy resources at these facilities, taking into consideration Project site electrical and/or hot water demands and load patterns, proposed installation sites, available solar resources, applicable land use restrictions, installation cost, and other relevant factors.

The Seller shall identify an appropriate location for the solar PV inverter or the solar water heating equipment and its related components and environmental control systems that will meet the following criteria:

- Ease of maintenance and monitoring
- Efficient operation
- Low operating losses
- Secured location and hardware
- Compatibility with existing facilities

The following documents generated by the Seller as part of this project shall also be provided to the City for review and record purposes.

Documents and information shall be sufficient to fully describe in detail the following and shall include, but shall not be limited to:

- A. Project schedule, updated monthly or sooner should significant changes occur
- B. Key Personnel
- C. Design basis
- D. Equipment and system sizing computations
- E. Design computations
- F. Construction detail drawings
- G. Construction plans and compliance documents, and project permits
- H. All electrical drawings, single line, physical layout, wiring diagrams
- I. All documents submitted to and provided by regulatory permitting and jurisdictional agencies and utility
- J. Commissioning plans and reports and records
- K. Operation and maintenance manuals & warranty information
- L. All documents shall be prepared according to current industry standards

All deliverables shall be submitted, depending on their type, separately in draft and final document format. Final documents shall be inclusive of all comments and/or issues raised during the review of draft documents.

All draft and final deliverables shall be submitted in 2 bound and 1 digital copies supplied on a CD, unless otherwise specified. All digital deliverables shall be in the latest version of the applicable software. Formatting for 11 x 17 drawing print size is preferred.

Digital copies shall include required drawings in AutoCAD and Adobe Acrobat PDF format and required specifications and design reports in MS Word and Adobe Acrobat PDF formats.

3. Regulatory, Permit, and Licensing Requirements

All work undertaken per this Agreement shall be in accordance with all Local, State and Federal (LORS) laws, ordinances, regulations and standards.

Prime and Sub contractors shall possess current valid Arizona contracting licenses for the applicable classification of work performed; properly licensed or certified individuals shall carry out all professional work.

It will be the sole responsibility of the Seller herein to seek and obtain all permits including but not limited to those from the City's permitting department for final zoning compliance review, building permits and inspections, the local utility for utility interconnection applications and final interconnection, and any other relevant permits. The Seller shall be responsible for and shall obtain all necessary permits for the project, wherein the City will be the signatory only if required and appropriate. The Seller shall be responsible for all costs including all fees and taxes regardless of the signatory. The Seller shall supply and install all equipment required to interconnect the solar PV systems to local utility. The Seller shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Seller excluding any service upgrade costs.

Comment [AU19]: Customizable

4. Construction, Operation and Maintenance General Obligations and Warranties

The Seller shall provide its own construction office or trailer on the site during construction and shall include temporary electricity if needed from the local electric utility. The City shall not provide office or storage space for the Seller's use. City agrees to turn over work area for construction. Seller is not responsible for City parking needs.

Throughout the construction of the solar project, the Seller shall keep the site free from accumulations of waste material, debris or rubbish. The Seller shall remove all waste, rubbish, tools, and surplus materials from the work site and keep the area clean. Cleanup shall be performed in accordance with established safety and proper disposal procedures and in accordance with all applicable federal, state and local laws, rules, and ordinances.

The Seller will be responsible for all aspects of maintaining the PV array or solar water heating equipment and BOS, including but not limited to cleaning the arrays, replacing broken or worn out system components, performing maintenance in accordance with equipment manufacturer recommendations, and ensuring that every part of the array is operating according to design, producing the maximum amount of hot water or power possible and free of power quality issues. To the maximum extent possible, the seller shall schedule maintenance and repair of the solar array and BOS at times when output of the array is at its lowest point so that power output is maximized.

The Seller shall secure the following minimum warranties for the PV system(s) which shall be fully transferable if the Buyout option is exercised:

- Any warranty required to qualify a PV system for available rebates or incentives
- Ten (10) year complete system warranty
- Twenty (20) year PV panel warranty (minimum)
- Ten (10) year inverter warranty (minimum)

The PV or solar hot water plants shall be operated and maintained in accordance with current industry standards, to protect the longevity of the facility, to maximize energy production, to fully support the City's goals, to safeguard the leased facilities, to not interfere with or cause a nuisance to ongoing facility operations, and to not disturb neighbors. No glare studies are required.

5. Other considerations

- A. Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance.
- B. Racking components shall be anodized aluminum, hot dipped galvanized steel, or material of equivalent corrosion resistance.
- C. Unprotected steel shall not be used in any components.
- D. Seller shall obtain electrical PE stamp verifying the integrity and code compliance of proposed PV systems and interconnection with facilities.
- E. All conductors shall be per applicable NEC Code and per all applicable building and electrical codes.
- F. All building penetrations shall be flashed and sealed by a certified roofer and maintain current warranty.
- G. Roof array layouts shall be designed to provide walking access around the perimeter of the roof, to comply with OSHA, the IFC and local fire codes, and to provide convenient access to existing roof mounted HVAC equipment.
- H. Parking canopy systems shall be designed to include code complaint safety lighting which shall be ten (10) feet clear, or to other applicable height requirements as specified by code or other requirements.

Exhibit 5
Engineering and Construction Requirements

Comment [m20]: The intent of this section is to list standard practices but must be customized per the city's requirements for project management and development.

1. Design Phase

1.1. Standard of Care

- Designer must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in its area of specialty in the State of Arizona.
- Designer must perform Services in compliance with all applicable federal, state and local codes, statutes, laws, regulations and ordinances, including environmental, energy conservation, and disabled access requirements.
- All designs must comply with all regulations and standards of the Fire Department having jurisdiction over the Project.
- Designer must use its best efforts to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project.

1.2. Signing and Stamping Documents

- Permit Set Documents and must be signed and stamped by the Design Professional(s) as appropriate to the discipline of Work.
- 50% Set Documents will not be stamped.
- CD documents will not be stamped.
- As Builts will not be stamped.

1.3. Insurance Requirements

- Seller must meet the insurance requirements as set forth in Exhibit 10 for design and construction phases of the Work.

2. Permits

2.1. Overview

- All required permits from the Authority Having Jurisdiction shall be obtained.

2.2. Submittals

2.2.1. Product Data Submittals

- The submittal process for permitted work takes place in two steps:
 - The Seller makes submittals to the Buyer without the actual Permit application. These submittals must fulfill all the requirements of Buyer's review and acceptance.
 - After Buyer acceptance of these submittals, the Seller shall apply for all required permits.

2.2.2. The Seller is responsible for payment of all Building Official review and permitting fees.

3. Fire Protection Plan

3.1. Seller shall prepare and submit to Buyer a written fire protection plan. –

3.2. At a minimum the fire protection plan shall include:

3.2.1. The name and phone number of the Seller representative responsible for compliance with the written fire protection plan.

3.2.2. Procedures for:

3.2.2.1. Reporting emergencies to the local fire department;

3.2.2.2. Emergency notification, evacuation and/or relocation of all persons at the

- project site;
- 3.2.2.3. Hot work operations;
- 3.2.2.4. Management of hazardous materials, if any;
- 3.2.2.5. Removal of combustible debris, if any; and,
- 3.2.2.6. Maintenance of emergency access roads.

4. General

4.1. Definitions

4.2. Access To Work

- 4.2.1. The Seller must provide Buyer continuous access to the project site during construction.

4.3. Use of Project Site

- 4.3.1. Seller must confine operations at the Project Site to areas permitted by law, ordinances, permits and the Contract Documents, and must not unreasonably encumber the Project Site with any materials, equipment, temporary structures, or temporary measures.
- 4.3.2. Seller's employees, or others subject to the Seller's control, are not permitted to reside on the Project Site in temporary living facilities.

4.4. Workplace Environment

- 4.4.1. The use or possession of alcohol, weapons, or illegal controlled substances by the Seller, or others subject to the Seller's control, on City property is prohibited.
- 4.4.2. The Seller must ensure and maintain a workplace environment free of personal harassment and intimidation.
- 4.4.3. Conduct that creates an intimidating, hostile, or offensive workplace environment is prohibited. Such conduct includes, but is not limited to, the following:
 - Verbal harassment, e.g., epithets, derogatory comments or slurs;
 - Physical harassment, e.g., assault, impeding or blocking movement, gestures, staring, or any physical interference with normal work or movement;
 - Visual forms of harassment, e.g., derogatory posters, letters, poems, graffiti, cartoons, or drawings.
- 4.4.4. Unwelcome and unwanted sexual advances constitute sexual harassment that is prohibited. For example, requests for sexual favors and verbal or physical conduct of a sexual nature are prohibited.
- 4.4.5. It is the responsibility of the Seller to:
 - Inform its employees and Subcontractors that behavior that creates an intimidating, hostile, or offensive workplace environment is prohibited;
 - Create a workplace environment that is free from harassment; and,
 - Take corrective action to stop prohibited behavior/conduct.
- 4.4.6. If in the reasonable opinion of the Buyer's Authorized Representative, any employee of the Seller or Seller's Subcontractors violates the prohibitions of this workplace environment, Seller must immediately remove that person or Subcontractor from the Project upon Buyer's request, and such person or Subcontractor must not be permitted to perform further Work on the Project Site.

4.5. Disruption of Buyer's Normal Operations

- 4.5.1. Seller must give timely advance notice to Buyer of Work that is likely to be disruptive to Buyer's normal operations at or near the Project Site. If Seller does not so advise Buyer, Buyer has the right to temporarily suspend Seller's Work or to require Seller to modify its Work operations to eliminate any disruption, and Seller is not entitled to any adjustment in the Contract Sum or Contract Time for any delay or additional costs associated therewith.

4.6. Cleanup

4.6.1. Seller must continuously keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by its operations or rubbish from any source that accumulates within the Project Site and any other area designated by the Buyer's Project Manager for use by the Seller.

4.6.2. Upon completion of the Work or any designated part thereof, Seller must promptly remove all its waste materials, rubbish and debris, and all its tools, construction equipment, machinery and surplus materials from the Project area or the completed part.

4.7. Disposal of Material Outside Project Area

4.7.1. To the extent that Seller discovers any hazardous materials, it shall bring the existence of such hazardous materials to Buyer's attention and Buyer shall dispose and pay for the proper disposal of such hazardous materials.

4.7.2. Hazardous Materials must comply with all legal requirements, including but not limited to containerization, labeling, manifesting, transportation, disposal site, and use of properly trained personnel. No later than fifteen (15) Days after Seller's request for Final Inspection, Seller must submit copies of all Hazardous Waste Manifests signed by Toxic Substances Disposal Facilities ("TSDF's") and certificates of disposal, to prove that Seller has legally disposed of such materials. All costs are to be covered by Seller for this type of disposal.

4.8. Hazardous Materials

4.8.1. Seller must comply with all Federal, State, City and local laws, statutes, ordinances and other regulations covering the use, storage, transportation and disposal of any Hazardous Materials on the Project. Seller must obtain all permits and pay all fees and taxes for all services and materials required to perform the Project.

4.8.2. The term "Hazardous Materials" as used herein means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace of the environment.

4.8.3. Prior to starting work, Seller must submit to Buyer one (1) copy of a list of all Hazardous Materials expected to be used on the Project. Seller must keep a copy of the list at the Project Site. This list must include but not be limited to any cleaners, solvents, paints or explosive charges used in the Work. Seller must submit one (1) copy of OSHA Form 20 – Material Safety Data Sheet ("MSDS") for each material listed and must advise every person at or near the Project Site of these materials, of proper handling, and of proper action in case of accident or exposure.

4.8.4. Seller must safely contain and store all its Hazardous Materials, and in the event of spill or discharge, must immediately notify all required Federal, State, County, City and local agencies including the fire department. Seller must protect personnel from exposure and provide treatment as necessary.

4.8.5. Seller must immediately advise Buyer of any potentially Hazardous Materials encountered at the Project Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.

4.8.6. Seller must not store or use any Hazardous Materials near air intakes or doors and windows serving persons on or off the Project Site without proper protection and safeguards to prevent exposure.

4.8.7. Seller must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials. Nothing in this Agreement, relieves Seller of

- responsibility for compliance with all applicable laws and statutes, or other provisions of the Contract, particularly Seller's responsibility for damage and preservation of life and property.
- 4.9. Trenching and Excavation
- 4.9.1. Before any excavation, Seller must, follow all necessary procedures to avoid underground facility damage.
- 4.10. Air Pollution Control
- 4.10.1. Seller and each Subcontractor must comply with all air pollution control rules, regulations, ordinances, statutes, and Project specific permit requirements of all regulatory agencies that apply to any work performed.
- 4.11. Water Pollution Control
- 4.11.1. Seller must comply with all Federal, State and local water pollution prevention and storm drain pollution prevention rules, regulations, ordinances, statutes, guidelines.
- 4.11.2. If required by law, ordinance, regulation, code, permit or the requirements of the Contract Documents, Seller must prepare a Project Specific Storm Water Pollution Prevention Program (SWPPP).
- 4.11.3. Seller must exercise every reasonable precaution to protect storm drains, channels and all bodies of water from pollution, and must conduct and schedule operations so as to avoid or minimize muddying and silting of any waters. Seller must construct whatever facilities are necessary or requested by Buyer to provide prevention, control and abatement of water pollution.
- 4.11.4. No provision of the Contract Documents relieves Seller of responsibility for compliance with flood control and water district requirements, or other applicable statutes relating to prevention and removal of water pollution.
- 4.11.5. Compliance with water pollution requirements does not relieve Seller from responsibility to comply with all provisions of the Contract Documents, particularly Seller's responsibilities for damage and preservation of property.
- 4.12. Sound Control
- 4.12.1. The Seller must comply with all AZ OSHA requirements.
- 4.12.2. The Seller must comply with all local sound control and noise level rules, regulations, and ordinances that apply to any work performed pursuant to the requirements of the Contract Documents.
- 4.12.3. Each internal combustion engine, used for any purpose on the Project or related to the Project, must be equipped with a muffler of a type recommended by the Manufacturer
- 4.12.4. Noise level from and hours of Seller's operations that are located within city limits, must comply with city ordinances or requirements. Seller's operations in the unincorporated areas or areas which border a city, town or other county must comply with the noise level requirements per local Ordinance or requirements adopted by other jurisdictions, whichever are more stringent.
- 4.12.5. Noise level requirements apply to all equipment used in the Project including, but not limited to, trucks, transit mixers, generators, air-tools, or equipment that may or may not be owned by the Seller. The use of loud sound signals must be avoided in favor of warning lights except those required by safety laws for the protection of personnel.
- 4.13. Worker's Sanitary Provisions & Use of Buyer's Facilities
- 4.13.1. Seller must conform to the rules and regulations for sanitary provisions established by the State, the County, the City, and any other applicable jurisdictions.

- 4.13.2. Seller must Provide and maintain toilets for use by its employees and the employees and representatives of the Buyer. These accommodations must be maintained in a neat and sanitary condition, and must comply with all applicable laws, ordinances and regulations pertaining to public health and sanitation.
- 4.13.3. Seller's personnel must not use Buyer's facilities without Buyer's express written permission, which will be at Buyer's sole discretion. Such Buyer's facilities include but are not limited to toilet facilities, food service facilities (cafeteria and coffee shop), utilities services of any kind, carts, fire extinguishers (except in emergencies), parking, storage space and any other facilities and services.
- 4.14. Submittals
- 4.14.1. General
- Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. Their purpose is to demonstrate those portions of the Work for which Submittals are required and the way the Seller proposes to conform to the information provided and the design.
 - All Submittals are instruments of Seller.
 - Buyer's review of Submittals is for general compliance with Code. Seller is solely responsible for all quantities, dimensions, weights, gauges, materials, fabrication processes, construction methods, coordination with the work of other trades, and construction safety precautions. Buyer's review does not relieve the Seller of responsibility for errors and omissions in the Submittals or from responsibility for proper fitting and construction of the work, nor from furnishing materials; and,
 - When certification of materials, systems or equipment is required by the Contract Documents, Design Professional and Buyer are entitled to rely upon the accuracy and completeness of such certifications and the calculations and other professional analysis supporting the certifications.
 - PM should define this timeline on the construction schedule.
- 4.14.2. Seller's Responsibilities
- Seller must, at its own expense, provide for Buyer's review of all Submittals required by the Contract Documents.
- 4.15. Shop Drawings
- 4.15.1. Present Shop Drawings in a clear and thorough manner. Identify details by reference to sheet and detail, schedule, and room numbers shown on Drawings.
- 4.16. Compliance with Laws & Regulations
- 4.16.1. Seller must keep informed of governmental regulations that may affect the work. Seller must observe and comply with, and must cause all agents, employees, Subcontractors and Suppliers to observe and comply with said regulations.
- Seller must, during the term of this Contract, comply with all applicable federal, state and local rules, regulations, and laws.
 - Sellers must maintain financial records adequate to show that City funds paid pursuant to the Contract were used for purposes consistent with the terms of the Contract. These records must be maintained during the term of this Contract and for a period of five (5) years from the termination of this Contract or until all Claims, if any, have been resolved, whichever period is longer, or longer if otherwise required pursuant to other provisions of this Contract.
- 4.17. Taxes, Utilities, Permits & Fees
- 4.17.1. Taxes: Seller must pay any or all taxes imposed by Federal, State, or local governments, that were legally enacted as of the Bid date or subsequently enacted

during the Contract Time, including but not limited to Federal excise tax and all State and local sales and use taxes. Buyer will not furnish any tax exemption certificate or any document designed to exempt Seller from payment of any tax on labor, services, materials, transportation, or any other items provided by Seller pursuant to the Contract Documents.

4.17.2. Utilities:

- Unless otherwise stated Seller will pay for the installation, metering and consumption of all “temporary” utilities. “Temporary” utilities include electrical, water and sewer for the following through project completion:
- To operate the Seller’s field office;
- To power and operate construction tools, temporary lighting, concrete, mortar and grout mixing and placement operations.

4.17.3. Unless otherwise stated in the Contract Documents, The City will arrange and pay for utility companies to provide and install main metering devices and permanent utility services from the Utility Company’s main service line to the metering devices. Once “permanent” utilities are connected the City will pay for all utility usage charges.

4.17.4 Permits & Fees: Seller must obtain and pay for all building permits, encroachment permits, and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, unless otherwise provided in the Contract Documents.

- Sellers must give all necessary notices and comply with all laws, ordinances, rules, regulations and lawful Orders relating to the Work, and to the preservation of the public health and safety.
- If Seller performs any work contrary to such laws, ordinances, Orders, rules and regulations, Seller shall bear all costs attributable thereto.
- Upon receipt, Seller must submit copies of all Seller obtained permits to the Buyer.
- Seller must arrange, coordinate, and pay for all permit related inspections unless otherwise provided in the Contract Documents.

4.17.5. Royalties & License Fees: Seller must pay all royalties and license fees, and must defend all suits or claims for infringement of any patent rights and save Buyer and its Consultants on this Project harmless from loss on account thereof.

4.17.6. Recycling: Seller shall comply with all recycling requirements.

4.18. Equal Opportunity Requirements

4.18.1. The City is an equal opportunity employer. Seller must comply with all applicable Federal, State, and local laws and regulation. Seller must 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, and layoff rates of pay or other forms of compensation.

4.19. Patents

4.19.1. Seller must assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work, and must indemnify and hold harmless Buyer and Buyer’s authorized representatives and Consultants, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

5. Subcontractors

5.1. Subletting and Subcontracting

- 5.1.1. The Seller is responsible for all work performed pursuant to the requirements of the Contract Documents, including work Subcontracted to others. All persons engaged in the work of the project are the responsibility of and subject to the control of the Seller.
- 5.1.2. No Subcontractor will be recognized as such, and all persons engaged in the work will be considered as employees of Seller who is responsible for their work.
- 5.1.3. When any Subcontractor fails to execute a portion of the work in a manner satisfactory to Buyer, the Seller must remove such Subcontractor immediately upon written notice from Buyer, and the Subcontractor must not again be employed on the Project.

5.2. Subcontractor's Contractual Obligations

- 5.2.1. By an appropriate agreement, Seller shall require each Subcontractor and Supplier, to the extent of that Subcontractor's or Supplier's work, to be bound to Seller by the terms of the Contract, and to assume toward Seller all the obligations and responsibilities which Seller, by these Contract Documents, assumes toward Buyer.
- 5.2.2. Said subcontracts and agreements must preserve and protect Buyer's rights pursuant to the Contract with respect to the Subcontractor's or Suppliers Work so the subcontracting thereof will not prejudice such rights. Seller must require each Subcontractor to enter into similar agreements with its Sub-subcontractors.
- 5.2.3. Seller must make available to each proposed Subcontractor and Supplier, prior to execution of the subcontract or agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound and, upon written request of the Subcontractor or Supplier, identify to the Subcontractor or Supplier any terms and conditions of the proposed subcontract or agreement that may be at variance with the Contract. Each Subcontractor must similarly make copies of all such Documents available to its proposed Sub-subcontractors.

5.3. Control of Subcontractors

5.3.1. Seller must:

- Schedule and coordinate the Work of all Subcontractors;
- Instruct all Subcontractors to consult with other Subcontractors to ascertain the locations of their various materials including stored materials and to familiarize themselves with their own material locations, making such changes as required to obtain the best results;
- Instruct all Subcontractors to schedule their Work and cooperate with the other Subcontractors to avoid delays, interferences, and unnecessary work, to conform to the schedule of operations as indicated in the Official Progress Schedule, and make Installations when and where directed;
- Make all necessary changes, including removing and reinstalling of materials, at their sole expense if they fail to check with other Subcontractors, and their Installed Work is later found to interfere with Work of other Subcontractors; and,
- Follow up to ensure that all Subcontractors Install their Work when and where directed.

5.4. Stop Notices

5.5. Buyer's Other Work

Seller agrees to coordinate its work with any existing or planned work of Buyer.

6. Protection of Persons and Property

6.1. Safety Provisions

Comment [AR21]: Customizable

- 6.1.1. Seller is solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of work. This requirement applies continuously and is not limited to Normal Hours of Work. No act, service, drawing or construction review, acceptance or other act by Buyer, Buyer's Project Inspector, Consultant or any other representative of Buyer is intended to include review of the adequacy of Seller's safety measures at or near the Project Site, at any place of Fabrication, or anywhere else.
- 6.1.2. Seller must take all necessary precautions on the Work for the safety of its workers, of Buyer's employees and the public, and must comply with all applicable Federal, State, and local safety laws and codes to prevent accidents or injury to persons on, about, or adjacent to where the Work is being performed.
- 6.1.3. Seller must erect and properly maintain at all times, as required by the conditions and progress of the Work, all appropriate safeguards for the protection of workers and the public, and post danger signs warning against construction hazards, such as fire, toxics, pesticides, chemicals, odors, noise, vibration, equipment operations, obstructions, falling objects, falls and all other construction related hazards.
- 6.1.4. Seller must designate a responsible member of its organization who will be present on the Project Site and who has the duty for prevention of accidents. Seller shall inform Buyer by email delivered to: _____ or other email address that Buyer provides in properly noticed written notice to Seller, of the name, email, and phone number of Seller's responsible member of its organization who will be present on the Project Site and who has the duty for prevention of accidents.
- 6.2. Public Safety Convenience
 - 6.2.1. Seller must provide for the safety of the public during construction and conduct its operations to minimize the amount of work posing potential hazards to the public.
 - 6.2.2. Seller must keep all walkways clear. Seller must protect pedestrians from falling objects and water runoff.
 - 6.2.3. Seller's equipment must enter and leave the Project area via access routes designated or accepted in writing by Buyer, and move in the direction of public traffic at all times. All movements on or across public traveled ways must not endanger public traffic.
 - 6.2.4. Seller must immediately remove any spillage, debris, dirt, or mud resulting from hauling operations along or across any public traveled way.
 - 6.2.5. Seller must minimize inconvenience or obstruction to the public. When Seller's operations create a condition hazardous to the public, Seller must furnish, erect, and maintain such Temporary Fencing, barricades, lights, signs, and other devices as are necessary for direction of the public or to avoid accidents, damage, or injury to the public. Seller must furnish such flagmen and guards as are necessary to direct the public or to give adequate warning of any hazardous conditions.
- 6.3. Protection and Restoration of Property
 - 6.3.1. Seller must immediately repair any damage, arising from or in consequence of the performance of the Contract, to improvements or property, whether above or below the ground, private or public, within or adjacent to the Project.
 - 6.3.2. In an emergency affecting the safety of life or property, including adjoining property, Seller must act at its discretion, with notice to Buyer, to prevent such threatened loss or injury. Seller must maintain adequate protection against damage to life and property involved in Project and on property adjacent.
- 6.4. Preservation of Cultural Resources

Comment [AR22]: Customizable

- 6.4.1. Pursuant to the National Historic Preservation Act of 1966, State laws and City ordinances, the following procedures are implemented to ensure historic preservation of cultural resources discoveries.
- 6.4.2. In the event potentially historical, architectural, archaeological or cultural resources (hereinafter "resources") are discovered during subsurface excavations at the Project Site, the following procedures apply:
- Seller to temporarily suspend all operations at the location of such potential resources.
 - A qualified Consultant must be utilized to assess the value of such resources and make recommendations.
- 6.4.3. If the Consultant determines that the potential find is indeed a cultural resource, Buyer will, as expeditiously as possible, advise Seller in writing of the action to be taken regarding the find, and the anticipated time frame and extent of any Work suspension.
- 6.5. Buyer's Building Official ("Building Official") Approval
- Overview
 - The Seller's Work is subject to code-compliance inspections by the Building Official. These inspections are for code compliance only and do not relieve the Seller from performing all work required.
 - The Seller must obtain all Permit and subsequent revisions as needed prior to construction work.
 - Fees
 - All Plan Check and Building Permit fees will be paid for by the Seller directly to the [Building Official].
 - Execution
 - No work shall commence until the Seller has secured from the Building Official the required permits.
 - The Building Official, when requested by the Seller or Buyer, shall make the requested inspections and shall indicate that portion of the Work that is satisfactory as completed, or shall notify the Seller wherein the same fails to comply with the appropriate codes of the authority having jurisdiction. Any portions that do not comply shall be corrected by the Seller at the Seller's expense, and a request for re-inspected made.
 - The process of obtaining Building Official approval of specific Work takes place as follows:
 - The Seller shall inspect the Work prior to requesting inspection by Building Official.
 - The Seller will request and coordinate the inspection by Building Official.
 - The Seller shall notify the Buyer's project representative to be present at the time of inspection by the Building Official.
 - Special Inspections. All costs for Special Inspections will be included in the Seller's Proposal for the performance of the work.

Comment [AR23]: Customizable

7. Commissioning Requirements

All solar equipment shall be commissioned according to current solar industry standards to assure that the equipment is performing to specifications and that all aspects of the installation comply with all applicable codes and manufacturer's specifications. For solar water heating installations, all aspects of the installation must comply with applicable codes and with SRCC and manufacturer's specifications. The equipment to be commissioned includes the data monitoring system.

Exhibit 6
Contract Price

The kWh Rate with respect to each applicable Generating Facility under the Agreement shall be in accordance with the following schedule(s):

Generating Facility:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

[*Calculated based on the Base Contract Price (year 1 kWh Rate) multiplied by []% inflation factor each year.]

Comment [AR24]: Customizable

Exhibit 7
Operations Forecasts, Scheduling Protocols & Monitoring

OPERATIONS FORECASTS, SCHEDULING PROTOCOLS and MONITORING

- 1. Twenty Year Forecast**
 - 1.1 No later than the Commercial Operation Date of each applicable Generating Facility, Seller will provide a twenty (20) year forecast of expected annual production for each applicable Generating Facility by completing Exhibit 8 (Expected Contract Quantity Form).
 - 1.2 Seller shall not conduct planned Outages at times other than as set forth in its Annual Operations Forecast, unless approved in advance by Buyer, which approval shall not be withheld or delayed unreasonably.

- 2. Outage Detail for Annual and Short Term Operations Forecasts**
 - 2.1 Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for the Outage.

- 3. Additional Outage Protocols**
 - 3.1 Seller is to notify Buyer of all planned or Forced Outages.
 - 3.1.1 Outage information provided by Seller is to include at a minimum start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for Outage.
 - 3.1.2 Planned Outages shall be provided by Seller to Buyer at least four (4) Business Days prior to the start of the requested Outage. Buyer and Seller shall work in good faith to schedule any Planned Outages at mutually convenient dates and times.

- 4. Forced Outages**
 - 4.1 "Forced Outages" are any unplanned reduction in the capability of a generating facility.
 - 4.2 Forced Outages shall be reported per DAS noticing or otherwise by Seller to Buyer within four (4) hours of such Outages.
 - 4.3 Notice by Seller to Buyer of a Forced Outage shall include the reason for the Outage (if known), expected duration of the Outage.
 - 4.4 Within forty-eight (48) hours of a Forced Outage or two (2) Business Days whichever is longer, a detailed email or other written report shall be provided by Seller to Buyer specifying the reason for the Outage, expected duration of such Outage, capacity reduction, and actions taken to mitigate such Outage.

- 5. Notices**
 - 5.1 All Schedules, Schedule changes, Forced Outages, and planned outages are to be submitted to Buyer by fax or email to the following persons: .

- 6. Meters, Communications, and Meteorological Station Requirements and Monitoring**
 - 6.1 Metering: Seller shall install utility-grade revenue, electronic, bi-directional meter per this Agreement. It should be capable of recording for each fifteen (15) minute interval demand (kW), energy (kWh), reactive power (KVAR), and other power quality metrics to measure the AC output of each inverter, and at the delivery point to the facility's

Comment [AR25]: Customizable

electrical system. For solar hot water systems, Seller will provide a high quality kWh/BTU meter.

The meter must meet all Local Electric Utility requirements.

6.2 Data Acquisition System (DAS), Metrological Station Requirements and Monitoring: The Seller shall provide a turnkey data acquisition and display system (DAS) that allows the City to monitor, analyze and display historical and live solar electricity or solar hot water generation data on the Web. The DAS shall meet all of the requirements of the Buyer's program and include instrumentation for PV systems that allows the measurement of:

- Instantaneous system output in kW
- Instantaneous irradiation in watts/square meter
- Instantaneous ambient temperature in degrees Fahrenheit
- Instantaneous wind speed (meters/second)
- Daily and year-to-date system output in kWh

For solar hot water, the DAS shall provide information showing the kWh or BTU's generated by the solar system.

Data shall be provided in a format that easily facilitates graphing and analysis in third party database or spreadsheet programs.

The DAS system shall allow the City to view current and historical data over the Internet, in 15-minute intervals. Sellers shall include web access to this data in fifteen (15) minute data format as well as provide hourly, monthly, and annual summaries for the duration of the PPA agreement. The City should also have direct access to the DAS data logger to collect and review all data.

The Seller will download and archive monthly data files for backup purposes. Files are to be stored for a minimum of five (5) years on a rolling basis following system acceptance. The Seller will ensure that automatic communication between the PV system's DAS and designated City-owned data systems is established and that downloads of the raw DAS data takes place to archive data throughout the useful life of the PV system on daily intervals.

For the life of the agreement, the actual kWh produced will be compared to the potential kWh given metered solar radiation and the expected degradation of the PV system over time. This information will be monitored on a monthly basis.

Comment [AR26]: Customizable

Exhibit 8
Expected Contract Quantity Form

Expected Annual Production for the site commencing on the Commercial Operation Date with respect to each Generating Facility under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

Exhibit 9
Form of Attestation
[Determine form by consent of the parties if needed at all]

Exhibit 10
Insurance Requirements

Comment [m27]: The intent of this section is to list insurance requirements but must be customized per the city's insurance practices and requirements.

Insurance

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

A. Evidence of Coverage

Prior to commencement of this Agreement, the Seller shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Seller upon request.

This verification of coverage shall be sent to the requesting city department, unless otherwise directed. The Seller shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the City. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

B. Qualifying Insurers

All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A - V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the City's Risk Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified City insurance requirements without thirty (30) days prior written notice of such cancellation or change being delivered to the City or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Personal Injury - \$1,000,000
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 City:

Additional Insured Endorsement, which shall read:

“City of XXXX, and members of the City Council, and the officers, agents, and employees of the City, individually and collectively, as additional insurers.”

Comment [AR28]: Customizable

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the Seller shall be notified by the contracting department of these requirements.

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 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 fifty thousand dollars (\$50,000) per occurrence/event.
 - c. Coverage as required herein shall be maintained for a minimum of two (2) years following termination or completion of this Agreement.
7. Claims Made Coverage

If coverage is written on a claim 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.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Seller and any approval of said insurance by the City or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Seller pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
2. The City 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 City 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.
3. Should any of the work under this Agreement be sublet, the Seller shall require each of its subcontractors of any tier to carry the aforementioned coverage, or Seller may insure subcontractors under its own policies.
4. The City reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined above.

CONSTRUCTION PHASE INSURANCE REQUIREMENTS

Insurance

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

A. Evidence of Coverage

Prior to commencement of this Agreement, the Seller shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier must accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Seller upon request.

This verification of coverage shall be sent to the requesting City department, unless otherwise directed. The Seller shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the City. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

B. Qualifying Insurers

All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A - V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the City's Risk Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified City insurance requirements without thirty (30) days prior written notice of such cancellation or change being delivered to the City or their designated agent.

D. Insurance Required

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 City.
 - c. **Contractual Liability** expressly including 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. **Owners' and Sellers' 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 include the following endorsements, copies of which shall be provided to the City:
- a. **Additional Insured Endorsement**, which shall read:
 "City of XXX, and members of the City Council, and the officers, agents, and employees of the City of XXXX, individually and collectively, as additional insurers."
- Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City of XXXX, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the Seller shall be notified by the contracting department of these requirements.
- b. **Contractual Liability Endorsement:**
 Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with the City of XXXX.
 - c. **X C & U (Explosion, Collapse and Underground) Endorsement:**
 Insurance afforded by this policy shall provide X, C and U Hazards coverage.
4. Claims Made Coverage
 If coverage is written on a claim 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 Seller's start of work (including subsequent policies purchased as renewals or replacements).
 - b. Seller will make every effort to maintain similar insurance during the required extended period of coverage following project completion, including the requirement of adding all additional insurers.

Comment [AR29]: Customizable

Comment [AR30]: Customizable

Comment [AR31]: Customizable

c. If insurance is terminated for any reason, Seller agrees to purchase an extended reporting provision of at least (2) two years to report claims arising from work performed in connection with this Agreement or Permit.

d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

5. 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.

6. Workers' Compensation and Employer's Liability Insurance

a. Statutory Arizona 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.

7. Sellers' Equipment Insurance

On an "all risk" basis covering equipment owned, leased, or used by the Seller. If the total value of equipment is less than one hundred thousand dollars (\$100,000) Seller may self-insure this exposure. If total equipment value is one hundred thousand dollars (\$100,000) or more, insurance is required. Such insurance shall include an insurer's waiver of subrogation in favor of the City. Seller shall indemnify, defend, and hold harmless the City for any loss or damage to its equipment. This coverage may be waived by the Risk Manager, but the Seller hereby releases and holds harmless the City for any loss or damages to its equipment.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Seller and any approval of said insurance by the City or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Seller pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The City 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 City upon satisfactory evidence of financial capacity. Sellers' obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Seller shall require each of its subcontractors of any tier to carry the aforementioned coverage, or Seller may insure subcontractors under its own policies.
4. The City reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined above.

INSURANCE REQUIREMENTS FOR LEASE AGREEMENT

Insurance

Without limiting the Tenant/Lessee's indemnification of the City, Tenant/Lessee, shall at its own expense, provide and maintain the following insurance coverage in full force and effect throughout the term of this lease:

A. Evidence of Coverage

Prior to commencement of this lease, Tenant/Lessee shall provide a Certificate of Insurance certifying that coverage as required has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by Tenant/Lessee upon request.

For long-term leases a periodic review/change of insurance requirements may be made every five (5) years to ensure appropriate coverage by City standards is in place.

B. Qualifying Insurers

All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A - V, according to the current Best's Key Rating Guide, unless otherwise approved by City's Insurance Manager.

D. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified City insurance requirements without thirty (30) days prior written notice of such cancellation or change being delivered to the City of XXXX or their designated agent.

Comment [AR32]: Customizable

D. Insurance Required

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. Personal Injury - \$2,000,000

2. General liability coverage shall include:

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

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

Additional Insured Endorsement, which shall read:

“City of XXXX, and members of the City Council, and the officers, agents, and employees of the City of XXXX, individually and collectively, as additional insurers.”

Comment [AR33]: Customizable

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City of XXXX, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

Comment [AR34]: Customizable

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 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 Insurance

Seller shall maintain not less than one million dollars (\$1,000,000) Fire Legal Liability on all real property being leased, including improvements and betterments owned by City, and shall name City as a loss payee. Seller shall also provide fire insurance on all personal property contained within or on the leased premises. The policy shall be written on a standard "all risk" contract, excluding earthquake and flood. The contract shall insure for not less than ninety (90) percent of the actual cash value of the personal property, and Seller shall name City as an additional insured.

Exhibit 11

Cash Flow Tables Showing Value of Solar
[NOTE THIS IS AN EXAMPLE ONLY]

Comment [m35]: The intent of this section is to provide an example to the PPA user. A summary table that details the PPA proposals including length, price/kWh, escalation clause, size of the system, estimated production, savings, etc... is suggested for inclusion.

PRELIMINARY POWER PURCHASE AGREEMENT PROPOSAL FOR SCC - VALLEY HEALTH CENTER-GILROY
Includes all Design, Installation, Materials and Maintenance

SYSTEM OVERVIEW

Total System Size:	714.8 kW DC 626.1 kW AC
PV Panels:	(3108) Yingli YL230P-29b
Inverters:	(2) Advanced Energy Solaron 333kW Fat Spaniel or similar
Racking System:	Carports @ 10 ⁰
Estimated Annual Production:	1,059,562 kWh
% of Current Annual Bill Offset:	94%
% of Current Annual kWh Usage Offset:	86%

PPA TERMS

Starting Rate:	\$.187 per kWh
Escalation Rate:	3% per year
Agreement Length:	20 years

FINANCIAL RETURN OF INVESTMENT

Ave. 1st Year Utility Savings per kWh Produced	\$.17 per kWh
20 Year Cumulative Cash Flow of Investment	\$594,149
20 Year Net Present Value of Investment at 5%	\$252,623

*Santa Clara County to retain ownership of RECs - value of RECs not articulated in this proposal

*Assumes Step 8 CSI rebate

*Assumes switch to A6 rate schedule