



STAFF REPORT SAUSALITO CITY COUNCIL

AGENDA TITLE

Power Purchase Agreement with SolarCity for the installation of a photovoltaic system on City Hall

RECOMMENDED MOTION

Staff recommends the City Council review the two rate options for the Power Purchase Agreement. Upon selecting the preferred contract rate, the Solar Committee and Staff recommend the City Council authorize the execution of the Power Purchase Agreement with SolarCity for the sale and purchase of electric energy from the installation of a Photovoltaic system on City Hall.

DISCUSSION

SolarCity has prepared a draft Power Purchase Agreement (PPA) for the purchase and sale of electric energy from the installation of a photovoltaic (PV) system on City Hall, included as **Attachment 1**. The PPA is for a 78.9 kW roof-mounted PV system with an expected energy production of 108,455 kWh annually.

Renewable Energy Credits

The City Council is being forwarded two rate options for the Power Purchase Agreement. In addition the energy rates presented to the City Council on June 10, 2008, SolarCity has provided an additional pricing option for the PPA that would allow the City to retain the PV system's Renewable Energy Credits (RECs). Renewable Energy Credits (RECs) are the environmental attributes of the system that allow the holder the right to claim the greenhouse gas reduction from the renewable energy generated. Each REC accrued represents proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource. At market rate, RECs currently cost approximately \$0.0015 per kW. While the retention of RECs represents an additional cost to the City, the environmental attributes of the system would be maintained by the City with this rate structure, including the right to claim a reduction in greenhouse gases.

The cash flow analysis of the PPA for both rate options is included as **Attachment 2**. Option A is a lower rate option similar to the schedule presented to the City Council on June 10, 2008 with the retention of RECs by SolarCity. Option B is a higher rate option with retention of the RECs by the City.

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Follow Up Items

In response to questions brought up during the last City Council meeting, SolarCity has clarified that the PV system does not eliminate the need for a back-up power generator at City Hall. Because the PV system will be tied to PG&E's electric grid, City Hall will still be subject to power outages should they occur.

In addition to the draft PPA, SolarCity has prepared a community solar program for Sausalito, which is provided as **Attachment 3**. The program would allow discounted pricing on solar systems for all homeowners and business owners in Sausalito for a 2-3 month period overlapping with the installation of the solar system on City Hall.

PERMIT PROCESS

The installation of the photovoltaic system will require issuance of a Building Permit. A Design Review Permit or Conditional Use Permit is not required for the installation of the solar system based on the California Government Code which limits the City's review to an administrative permit for solar panels. Staff does not have reason to believe the PV system would adversely impact the public health, safety, and welfare, and has not received public comments on concerns with the PV system to otherwise identify adverse impacts requiring a use permit, other than those received during the June 10, 2008 City Council meeting regarding the reflective coating of the panels.

The installation of the PV system is estimated to be completed by October 16, 2008. Once the engineering and design of the system is complete, project plans for the PV system will be routed through plan check, and construction may initiate upon approval and issuance of the Building Permit.

STAFF RESOURCES

Support from City staff needed to complete the construction of the PV system on City Hall includes finalization of the PPA contract, coordination with SolarCity to receive the California Solar Initiative rebate for the PV system, responding to contractor inquiries regarding project design and engineering, facilitation of issuance of the Building Permit, and project monitoring during construction. Associate Planner Brent Schroeder will be the point of contact for the solar project.

FISCAL IMPACT

The PPA contract rates may be structured under two options: A) SolarCity retains the Renewable Energy Credits; and B) the City retains the Renewable Energy Credits. There are no additional costs to the City for the installation of the system, other than any projected increase in energy rates and the staff time necessary to complete construction as outlined above. The following outlines the cash flow analysis for each option. It should be noted that both cash flow analyses assume the City purchases the PV system in Year 15, which is an optional purchase. The system would be removed if the City did not choose to purchase it upon expiration of the PPA.

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Option A

Operation of the PV system in its first three years would result in a projected negative cash balance: \$539 in the first year, \$490 in the second year, and \$217 in the third year. In its fourth year, the system would become cash positive with a projected savings of \$301, and in its fifth year would cover the initial negative cash flow, with a total cash balance of \$1,086. This cash balance would continue to grow until Year 15, when the analysis assumes the purchase of the PV system and the total cash balance is negative \$81,026. By Year 18 the cash balance would return to a positive status.

Option B

Operation of the PV system would result in a projected annual total negative cash balance throughout the 15 year term of the PPA: \$2,166 in the first year, \$3,809 in the second year, and \$5,294 in the third year. The maximum total negative cash balance of \$9,814 would occur in its ninth year. In Year 15, the total negative cash balance would be \$118,889 assuming purchase of the system. By Year 18, the system would maintain a positive cash balance.

RECOMMENDATIONS FOR COUNCIL ACTION

Staff recommends the City Council review the two rate options for the Power Purchase Agreement. Upon selecting the preferred contract rate, the Solar Committee and Staff recommend the City Council authorize the execution of the Power Purchase Agreement with SolarCity for the sale and purchase of electric energy from the installation of a Photovoltaic system on City Hall.

ATTACHMENTS

1. Draft Power Purchase Agreement from SolarCity
2. SolarCity cash flow analysis for the PV system financed by a PPA
 - A. Without the retention of Renewable Energy Credits
 - B. With the retention of Renewable Energy Credits
3. SolarCity Community Solar Program

PREPARED BY:

Sierra Russell

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REVIEWED BY:

Jeremy Graves

Jeremy Graves
Community Development Director

Mary A. Wagner

Mary Wagner
City Attorney

SUBMITTED BY:

Adam W. Politzer

Adam W. Politzer
City Manager

CC:

Solar Committee Members:
Janelle Kellman, Planning Commission Chair
Dane Faber, Sustainability Commission Chair
Richard Fortmann, Sustainability Commission
Sue Currier, Sustainability Commission

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Solar Energy Purchase Agreement (Commercial)

THIS SOLAR ENERGY PURCHASE AGREEMENT (this "Agreement") is made and entered on July 1, 2008 (the "Effective Date") by and between the following parties (each a "Party" and collectively the "Parties"):

Purchaser:

City of Sausalito
420 Litho Street
Sausalito, CA 94965

Attention: Adam Politzer

Telephone: (415) 289-4166
Fax: (415) 289-4167
Email: apolitzer@ci.sausalito.ca.us

Seller:

SolarCity Corporation
393 Vintage Park Dr., Suite 140
Foster City, CA 94404
Attention: Lease Administrator

Telephone: (650) 638-1028
Fax: (650) 638-1029
Email: LeaseAdministrator@solarcity.com

RECITALS

- A. This Agreement relates to the purchase and sale of electric energy from a photovoltaic electric generating system described on Appendix B (the "**System**"), owned by Seller and installed at the Purchaser's facility described on Appendix C (the "**Facility**").
- B. Purchaser is (check one) the owner and operator the owner (but not the operator) the lessee and operator of the Facility. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all of the electric energy generated by the System in order to provide power to the Facility.

Agreement

NOW, THEREFORE, for good and valuable consideration, the Parties hereto agree as follows:

1. The following provisions and the attached appendices and schedules listed below, each of which are incorporated herein by this reference as though set forth herein in their entirety, shall be deemed to form the agreement of the Parties (collectively, the "**Agreement**"),:

Appendix A	Basic Contract Terms
Appendix B	Description of the System
Appendix C	Purchaser's Facility
Appendix D	License Area
Appendix E	General Terms and Conditions (April 17, 2008)
Schedule 1	Definitions

Attachment 1
77 pages

2. This Agreement, together with all Appendices and Schedules hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

3. Any waiver of the provisions of this Agreement must be in writing and will not be implied by any usage of trade, course of dealing or course of performance. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

4. Both Parties have been represented by counsel of their choice in connection with the negotiation, execution and delivery of this Agreement, and as such no provision of this Agreement shall be construed or interpreted for or against either Party based upon any contention that such provision was drafted solely by such Party or its counsel.

5. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

6. This Agreement is made and entered into for the sole protection and legal benefit of Purchaser and Seller, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

7. This Agreement may be modified only by a writing that is signed by both Parties.

8. If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions of this Agreement will remain in full force and effect.

9. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA (AS PERMITTED BY SECTION 1646.5 OF THE CALIFORNIA CIVIL CODE), EXCLUDING ANY CHOICE OF LAW RULES THAT MIGHT DIRECT THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION, IRRESPECTIVE OF THE PLACES OF EXECUTION OR OF THE ORDER IN WHICH SIGNATURES OF THE PARTIES ARE AFFIXED OR OF THE PLACE OF PERFORMANCE.

10. This Agreement may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Seller:

Purchaser:

SolarCity Corporation

City of Sausalito

By: _____

By: _____

Name: _____

Name: Amy Belser

Title _____

Title: Mayor

Appendix A Basic Contract Terms

Term: Fifteen (15) years, beginning on the Commercial Operation Date

Extended Terms: Up to Three (3) Extended Terms of Five (5) years each at then-market rates

Renewable Energy Credits: All Renewable Energy Credits (RECs) shall accrue to Purchaser at a rate of 1 REC per 1 Megawatt-hour produced.

Contract Price:

Contract Year	\$/kWh
1	\$0.1800
2	\$0.1881
3	\$0.1966
4	\$0.2054
5	\$0.2147
6	\$0.2243
7	\$0.2344
8	\$0.2450
9	\$0.2560
10	\$0.2675
11	\$0.2795
12	\$0.2921
13	\$0.3053
14	\$0.3190
15	\$0.3334

Condition Satisfaction Date: July 26, 2008

Anticipated Commercial Operation Date: October 16, 2008

Outside Commercial Operation Date: November 30, 2008

Purchase Option Price:

End of Contract Year	Option Price*
6	\$250,456.37
10	\$220,487.95
15	\$139,040.00

* Higher of Fair Market Value of System or amount specified

Termination Value:

Contract Year	Termination Value
1	\$1,200,755.06
2	\$827,319.96
3	\$697,517.36
4	\$582,730.63
5	\$473,504.19
6	\$362,157.34
7	\$331,513.71
8	\$308,971.57
9	\$283,785.55
10	\$255,683.88
11	\$224,495.00
12	\$189,997.65
13	\$151,978.56
14	\$110,146.53
15	\$64,256.80

Appendix B
Description of the System

Solar System Location: 420 Litho St., Sausalito CA 94965

Solar System Size (DC kW)	78.9
Expected First Year Energy Production (kWh)	108,455
Expected Module	SunPower SPR-305-WHT
Expected Inverter	SatCon AE-75-60-PV-D
Expected Structure	Custom hollaender pipe rack

Seller Responsibilities

1. **Design Preparation:** Perform an inspection of the proposed solar power plant mounting site to assure long-term safeguards and stability.
2. **Rebate:** Prepare all rebate documentation and communicate with all relevant agencies, if applicable.
3. **Design:** Produce and provide CAD single-line electrical and layout drawings. Drawings will consist of a complete site plan showing the location of the array, inverters, and routing of conduits, and any details necessary for the plan check and permitting.
4. **Pre-installation Conference:** Before installation of the PV systems, conduct a pre-installation conference at the project site with the installers and other parties to review procedures, schedules, safety, and coordination of the installation with other elements of the work. Several conferences may be needed if the complexities and construction schedules require it.
5. **Installation:** Furnish all necessary mounting hardware, photovoltaic modules, electrical equipment, and labor for installation of the PV systems up to the Utility Grid interconnection point[s] as indicated on the contract drawings and specified herein.
6. **Workmanship:** All work shall be performed by skilled workers regularly engaged and specializing in this type of work, in strict accordance with the installation directions of the approved manufacturers and as specified herein.
7. **Inspections:** Serve as the Purchaser's representative for applicable City and County Inspections in relation to the Solar project.
8. **Site Safety:** Seller abides by the highest level of safety for its installation personnel and will adhere to the strongly enforced policy for well-being and safety of Purchaser's on-site users during all phases of the installation. Adequate measures will be in place to rope off any and all installation areas in addition to securing all sites of equipment, tools and electrical wiring for post-hour site activity. Post installation safety components include the proper labeling of all electrical cabinet components to code compliant guidelines.
9. **Acceptance Testing and System Commissioning:**
 - a. Seller will conduct an in-depth inspection, test & commissioning procedure to insure that the photovoltaic ("PV") system is installed in a professional manner and consistent with the highest level industry practice and operational requirements.
 - b. A record of the installation and the major components including modules, inverters, transformers, and source circuit combiners is always documented in the Test & Commissioning Report.
 - c. Seller will verify that all non-current-carrying metal parts are solidly grounded and all equipment and PV system grounding is installed and functional per NEC 2008.
 - d. Provide complete operation and maintenance manuals for the PV systems [two printed copies and one electronic copy for each]. Manuals will include: as-built electrical drawings, as-built shop drawings, a copy of the required submittals, product cut sheets, product operation manuals, startup and shutdown procedures, and written Utility approval of the system[s], product warranties and supplier and installer contact information.

Purchaser Responsibilities

1. **Site Preparation:** Take responsibility for pre-installation site clean-up including removal of all debris and obstacles that may impede solar installation. Specific action will be required in the following areas:
 - a. **Parking:** Set aside designated areas where installation crews may unload & load vehicles with equipment as required.
2. **Site Access:** Assume responsibility for security access to the solar array upon installation completion.
3. **Existing Facilities:** Provide all available design and as-built drawings of the existing facilities to facilitate system design and installation.
4. **Project Management:** Provide a single point of contact for each installation. Customer point of contact shall be available on 24 hours notice.

Clarifications

1. **Work Hours:** General work hours are Monday through Friday 7am to 5:30pm unless approved by Seller's Project Manager.
2. **Change Orders:** All change orders will have a minimum \$250 processing fee. Change orders may result in a restatement of basic contract terms shown in Appendix A.
3. **Schedule:** The schedule duration and general conditions are based on the contract set of documents. Any additional scope changes are subject to additional increases in time and associated general conditions costs.
4. **Exclusions:** The following items are excluded from this Scope of Work:
 - a. Removal of any vent obstructions
 - b. Modifications to existing structures
 - c. Solar module upgrades
 - d. Re-roofing
 - e. Hazardous materials removal and disposal
 - f. Fencing and/or security barriers
 - g. Trimming or removal of vegetation, weeds, shrubs, or rocks trees.
 - h. Replacement of any asphalt or concrete
 - i. Modification to any walk-ways, roadways or sub-surface conditions.
 - j. Modification and/or repair to any under-ground service utilities [water, electric, sewer, etc]
 - k. Carpentry
 - l. Trenching/digging
 - m. Service upgrades
 - n. Sheet metal
 - o. Landscaping
 - p. Scanning
 - q. Parking lot striping
 - r. Permanent roof access
 - s. Bonds
 - t. Permanent safety equipment
 - u. Unforeseen subsurface conditions
 - v. Off-hours labor
 - w. Material escalation over 20% from time of contract signing to materials procurement

Exclusions continued:

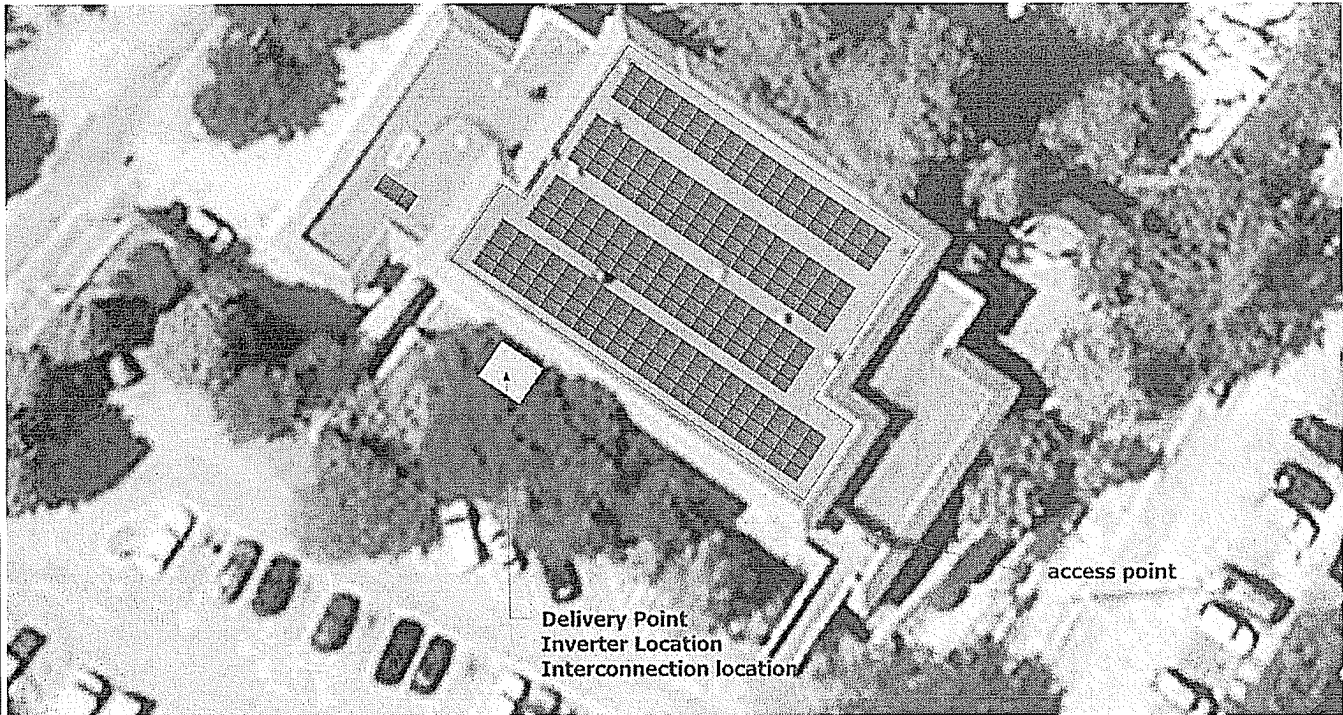
- x. Changes to the existing electrical infrastructure
- y. Painting
- z. Safety scaffolding
- aa. Lighting
- bb. Liquidated damages
- cc. Non-PV permits
- dd. Archeological or environmental site constraints
- ee. Prevailing wage rates

Appendix C Purchaser's Facility

The City of Sausalito City Hall building located at 420 Litho Street, Sausalito, CA is a multi-purpose building housing Sausalito city offices, city council chamber, archives, a library, and public use space.

The Solar Array will be placed on the roof, and the associated Power Condition Equipment (Inverter) will be situated on the ground near the generator and meter on the SW-facing side of the building. The Solar Array will be installed at a tilt angle as to optimize energy production throughout the year. From the Solar Array area, conduit will travel down the side of the building utilizing the shortest possible run to the inverter. Rendering view is provided.

Appendix D License Area



In addition to the access points noted above, the following access must be allowed:

- Interior access to meter room via the lower entrance and dance studio
 - During construction
 - During O&M

Appendix E General Terms and Conditions

Revised March 14, 2008

Article 1 Definitions and Interpretation: Unless otherwise defined or required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in Schedule 1, (b) the singular includes the plural and vice versa; (c) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (d) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (e) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

Article 2 Purchase and Sale

2.1. Purchase and Sale of Electricity: Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Term. Electric energy generated by the System will be delivered to Purchaser at the Delivery Point identified on Appendix D. Purchaser may purchase electric energy for the Facility from other sources only to the extent that the Facility's electricity requirements exceed the output of the System. Purchaser shall be entitled to receive credit from the Utility for any electric energy generated by the System in excess of its needs pursuant to applicable "net metering" or similar rules.

2.2. Contract Price: Purchaser shall pay Seller for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Appendix A for the applicable Contract Year. The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

2.3. Title and Risk of Loss: Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at that point.

2.4. Environmental Incentives and Environmental Attributes: Except as specified in Appendix A, Seller is the owner of all Environmental Attributes related to the System and the production of electric energy from the System and all Environmental Incentives related to the construction, ownership or operation of the System. Seller has the right to receive directly, or to have such amounts paid over to Seller by Purchaser to the extent received by Purchaser, any credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available

from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority (collectively, the "Environmental Incentives"). Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Incentives and Environmental Attributes, including by using the electric energy generated by the System in a manner necessary to qualify for available Environmental Incentives and Environmental Attributes, but Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection therewith unless reimbursed by Seller. Purchaser's purchase of electricity does not include Environmental Attributes, Tax Credits or any other attributes of ownership and operation of the System. Environmental Attributes and Tax Credits shall be retained by Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Purchaser and Seller may by mutual written agreement set forth specific statements that may be used by Purchaser in any press releases that address Purchaser's use of solar or renewable energy.

Article 3 Conditions Precedent

3.1. Conditions Precedent to Seller's Obligations: Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

(a) Completion of a physical inspection of the Facility and the Premises, including if applicable geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the construction, installation and operation of the System;

(b) Approval of this Agreement, the related Site Lease (if any) and the construction agreement for the System by Seller's Financing Parties;

(c) Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;

(d) Receipt of all necessary zoning, land use and building permits; and

(e) Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system.

3.2. Conditions Precedent to Purchaser's Obligations: Purchaser's obligations under this Agreement are conditioned on the completion of the

following conditions to Purchaser's reasonable satisfaction on or before the dates indicated:

(a) Receipt of written notice from Seller on or before the Condition Satisfaction Date that Seller's conditions precedent listed in Section 3.1 have been satisfied or waived by Seller; and

(b) The occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date.

3.3. Failure of Conditions Precedent: If any of the Seller's conditions precedent listed in Section 3.1 or the Purchaser's conditions precedent listed in Section 3.2 are not satisfied by the applicable dates specified in those sections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. However, if they are unable to do so, the Party whose obligations are conditioned on satisfaction of the failed condition may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement as a result of such termination.

Article 4 Seller's Obligations

4.1. Permits and Approvals: Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense, any zoning, land use and building permits required to construct, install and operate the System. Seller shall also use commercially reasonable efforts to obtain, at its sole cost and expense, any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system. Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

4.2. Repair and Maintenance of the System: Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to and , maintenance of the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). However, in the event of any unforeseen problems in maintaining the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.

Seller shall not be responsible for any work done by others on any part of the System unless authorized in advance by Seller in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the

System by anyone other than Seller or Seller's contractors. In the event of a problem with the System for which Seller is not responsible as provided in this Agreement, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' standard rates and charges then in effect.

Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement, provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser, and shall provide Purchaser with advanced written notice of any expected suspension of service.

Each of Purchaser and Seller shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser and Seller each shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.3. Use of Contractors and Subcontractors: Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.

4.4. Liens and Payment of Contractors and Suppliers: Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller and shall keep the Facility free and clear of any liens related to such charges. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.

Article 5 Purchaser Obligations

5.1. Facility Access Rights: Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises as more particularly described in Appendix D (the "License Area") for the purposes of

(a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. The term of the License shall continue until the date that is one hundred eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the License Area are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller may record a memorandum of license in the land records respecting the License.

5.2. OSHA Compliance: Purchaser shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other applicable laws are adhered to for the Facility and the Premises and the areas where the System is to be installed and operated, and where any Seller equipment used in operating and maintaining the System is to be stored.

5.3. Maintenance of Facility: Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser is fully responsible for the maintenance and repair of the Facility's electric system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

5.4. Alteration of Facility: Purchaser shall not undertake any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without the prior written consent of Seller. If Purchaser wishes to undertake such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except in the event of emergency repairs, in which event notices may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary in order to perform such alterations or repairs, such work and any replacement off the

System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors. All of Purchaser's alterations and repairs will done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

Purchaser shall be permitted to be off line for two (2) full twenty-four (24) hour days offline (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Article 8.

5.5. Liens: Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.

5.6. Security: Purchaser shall be responsible for maintaining the physical security of the License Area and for any damage or vandalism to the System as a result of failure to maintain such security. Purchaser will not conduct activities on, in or about the License Area or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Facility's alarms.

5.7. Insolation. Purchaser agrees that access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations under this Agreement and a material factor in Seller agreeing to enter into this Agreement on the terms and conditions set forth herein. Accordingly, Purchaser shall not cause and, to the extent it is able to do so, shall not permit any interference with the Insolation available to the System and shall not construct any improvements, additions or alterations to the Facility that would interfere with such Insolation. If Purchaser becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation of the System, Purchaser shall notify Seller and shall cooperate with Seller in preserving

existing levels of Insolation of the System. The Parties agree that loss of Insolation of the System would irreparably injure Seller, that such injury may not be adequately compensated by an award of damages, and that Seller is entitled to seek specific enforcement of the foregoing covenants of Purchaser.

5.8. Proof of Insurance. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

5.9. Data Line. Purchaser shall provide Seller a high speed internet data line for the entire Term in order to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Article 8.

Article 6 Term and Termination

6.1. Initial Term: The Initial Term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date and terminate at the end of the Term specified on Appendix A, unless earlier terminated as specifically provided for in this Agreement. The "Commercial Operation Date" is the date on which Seller gives Purchaser written notice that the System is mechanically complete and in operation and is providing electric energy to the Delivery Point. Upon request from Purchaser, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility.

6.2. Extended Terms. If Purchaser has not exercised its option to purchase the System set forth below before or at the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number of additional periods of the duration specified in Appendix A (each an "Extended Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Extension Term, as applicable. The other Party shall give the Party sending the notice written notice of whether or not it is also willing to extend the term of this Agreement on the terms and conditions set forth herein within thirty (30) days after receipt of the written notice from the first Party. Failure to give written notice within such thirty (30) day period shall be deemed a rejection of the first Party's offer to extend the term. If both Parties agree to extend the term of this Agreement, it shall be extended at the end of the Initial Term or the then current Extended Term for an Extended Term on the same terms and conditions as are set forth herein. If the Party receiving the notice rejects or is deemed to reject the first Party's offer to extend, this Agreement shall

terminate at the end of the initial Term or the then current Extended Term

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

6.4. Relocation of System: If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility because of a change in lease conditions prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and insolation. Purchaser shall provide at least sixty (60) but not more than one hundred eighty (180) days prior written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement (other than the Effective Date, License, which will be amended to grant rights in the real property where the System relocated to and the Term, which will be the remainder of the Term of this Agreement) and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System. If the substitute facility has inferior insolation as compared to the original Facility, Seller shall have the right to make an adjustment to Appendix A such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute Facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

6.5. Removal of System at Expiration: Upon the expiration or earlier termination of this Agreement according to its terms (provided Purchaser does not exercise its purchase option provided for herein), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date (but in no event later than ninety (90) days after the expiration of the Term). The Facility shall be returned to its original condition, except for System mounting pads or other support structures, which may be left in place, and ordinary wear and tear. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage, staging and laydown of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

Article 7 Metering: Electricity delivered to the Facility shall be measured using a utility grade kilowatt-hour meter installed by Seller and located on the System. Upon Purchaser's written request, Seller shall furnish a copy of all technical specifications and accuracy calibrations for the meter and test the meter upon Purchaser's request. Seller will test the metering equipment once per Contract Year at its expense and otherwise at Purchaser's request and expense (unless the meter is found to be inaccurate by more than 3% as provided below). If testing of the metering equipment indicates that such equipment is in error by more than 3%, then Seller shall promptly repair or replace such equipment. Seller shall make a corresponding adjustment to the records of the amount of electricity provided by the System based on such test results for (i) the actual period of time when such error caused inaccurate meter readings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the last previous test confirming accurate metering or the date the meter was placed into service, but not to exceed two (2) years. If testing is pursuant to Purchaser's request and testing indicates that the metering equipment is in error by 3% or less, Purchaser shall be responsible for the costs of the testing. However, if testing indicates that the metering equipment is in error by more than 3%, Seller shall be responsible for the costs of the testing.

Article 8 Billing and Payment

8.1.1. Monthly Charges. Purchaser shall pay Seller each month the Contract Price for electric energy produced by the System and delivered to the Delivery Point at the rate set forth in Appendix A and calculated as provided in Section 2.2.

8.1.2. Monthly Invoices. Seller shall furnish to Purchaser monthly invoices. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser to Seller.

8.1.3. Utility Invoices. Purchaser shall authorize the Utility to send to Seller duplicates of any bills sent to Purchaser. In the event that the Utility does not permit such duplicate bills to be sent to Seller, Purchaser shall, promptly upon receipt of the bill, make a photocopy of such bill and mail the copy to Seller. Purchaser shall pay all charges assessed by the Utility to the Facility.

8.1.4. Utility Taxes. Purchaser shall pay or reimburse Seller for any federal, state and local taxes, regulatory fees and surcharges or other charges assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure.

8.1.5. Payment Terms. All amounts due under this Agreement shall be paid within twenty (20) days of presentment of an invoice for the amounts owing. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall bear interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

Article 9 Default and Remedies

9.1. Events of Default: The occurrence of any one or more of the following events with respect to a Party (the "Defaulting Party") shall be an event of default ("Event of Default") under this Agreement: (1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a dispute, within ten (10) days following receipt of written notice from the other Party (the "Non-Defaulting Party") of such failure to pay ("Payment Default"); (2) failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Event of Default, if (i) the Defaulting Party initiates such cure with the thirty

(30) day period and continues such cure to completion and (ii) there is no material adverse affect on the Non-Defaulting Party resulting from the failure to cure the Event of Default; (3) if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; (4) Purchaser loses its rights to occupy and enjoy the Premises; or (5) a Party becomes Insolvent.

9.2. Remedies:

9.2.1. Remedies for Payment Default. On the occurrence of a Payment Default, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

9.2.2. Remedies for Other Defaults. On the occurrence of an Event of Default other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Event of Default. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach of a default by the other Party that does not become an Event of Default.

9.2.3. Damages Upon Termination. Upon a termination of this Agreement by the Non-Defaulting Party as a result of an Event of Default by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):

(a) If Purchaser is the Defaulting Party and, as a result of such Event of Default, Seller terminates this Agreement, the Termination Payment shall be equal to the sum of (i) the Termination Value set forth in Appendix A for such Contract Year, (ii) removal costs as provided in Section 9.2.4, and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.

(b) If Seller is the Defaulting Party and, as a result of such Event of Default, Purchaser terminates this Agreement, the Termination Payment shall be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the Facility for the remainder of the Initial Term or the then current Extended Term, as applicable; (ii) all costs reasonably incurred by

Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser.

(c) The Termination Payment payable by the Defaulting Party shall not be less than zero. The Non-Defaulting shall take all commercially reasonable efforts to mitigate its damages as the result of an Event of Default.

(d) The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Event of Default by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in Appendix A is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

9.2.4. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 9.2, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System.

Article 10 Representations and Warranties

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

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

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

10.2. Representations and Warranties of Purchaser: Purchaser further represents and warrants to Seller the following:

10.2.1. License. Purchaser has the full right, power and authority to grant the License contained in Article 4.

Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.

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

10.2.3. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.

10.2.4. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

10.2.5. Use of Electricity. No electricity generated by the System will be used to heat a swimming pool.

Article 11 Casualty and Insurance

11.1. If the System is damaged or destroyed by casualty of any kind or any other occurrence other than the negligence or willful misconduct of Purchaser, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than 50% of the System is destroyed during the last five years of the Initial Term or during any Extended term, Seller shall not be required to restore the System, but may instead terminate this Agreement. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than the negligence or willful misconduct of Seller, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Extended Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in Appendix A and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

11.2. **Insurance:** At all times during the Term of this Agreement, Seller and Purchaser shall maintain the following insurance:

11.2.1. Seller's Insurance. Seller shall maintain (i) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000

annual aggregate, naming Purchaser, its elected and appointed officials, officers, employees, contractors and agents, as an additional insured, (ii) employer's liability insurance with coverage of at least \$1,000,000 and (iii) worker's compensation insurance as required by law.

11.2.2. Purchaser's Insurance. Purchaser shall maintain (i) "all risk" casualty insurance on the System for the full replacement cost thereof, (ii) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, naming Seller as an additional insured, (iii) employer's liability insurance with coverage of at least \$1,000,000 and (iv) worker's compensation insurance as required by law. In addition, Purchaser will maintain casualty insurance with respect to the Facility.

11.2.3. General Requirements. Each Party shall furnish the other Party current certificates evidencing that the insurance required hereunder is being maintained. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, terminated or materially altered, (ii) be written on an occurrence basis, (iii) with respect to the casualty insurance policies, name Seller as loss payee thereunder, (iv) with respect to the liability insurance policies, include the other Party as an additional insured as its interest may appear, (iv) include waivers of subrogation, and (v) be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide or otherwise reasonably acceptable to the other party.

Article 12 Ownership; Option To Purchase

12.1. **Ownership of System:** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from the such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser

will obtain such consent from such owner. Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises.

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

Article 13 Indemnification

13.1. General: To the fullest extent permitted by law, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the elected and appointed officials, directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective Affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from the breach of any representation or warranty set forth in Article 10 and from injury to or death of persons, and damage to or loss of property to the

extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 13.1, however, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 13.3.

13.2. Notice and Participation in Third Party Claims: The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 13.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 13.2 for any Claim for which such notice is not provided, to the extent that the failure to give such notice prejudices the Indemnifying Party.

13.3. Environmental Indemnification: Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the License Area of any Hazardous Substance to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any deposit, spill or release of any Hazardous Substance on or about the License Area or the Premises generally.

13.4. Survival of Obligation: The provisions of this Article 13 shall continue in full force and effect

notwithstanding the expiration or termination of this Agreement.

Article 14 Force Majeure

14.1. Effect of Force Majeure: Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary, provided that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice, fully describing the particulars of the occurrence to the extent reasonably possible; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Seller shall not be liable for any damage to the System or the Facility resulting from a Force Majeure event. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

14.2. Payment Obligations Not Excused: Notwithstanding anything herein to the contrary, the obligation to make any payments accrued under this Agreement prior to a Force Majeure event shall not be excused by the Force Majeure event.

14.3. Termination Due To Extended Force Majeure: If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

Article 15 Assignment and Financing

15.1. Assignment: This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an Affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any Person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted

assignments only upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

15.2. Financing: The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties ("Financing Parties") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties, provided that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

Article 16 Confidentiality and Publicity

16.1. Confidentiality: If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and Affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these

provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 16.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 16.1 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 16.1. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 16.1, but shall be in addition to all other remedies available at law or in equity.

16.2. Permitted Disclosures: Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law, at a public meeting pursuant to city ordinance or standard practices, or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16.3 Notwithstanding the preceding Sections 16.1 and 16.2, the Parties recognize that Purchaser is a public entity subject to the California Public Records Act, and this Section and the restrictions herein contained shall not apply to any data or documentation which is

- a. required to be disclosed pursuant to state or federal law, or an order or requirements of a regulatory body or a court;
- b. disclosed by a Party to an affiliate of such Party or in connection with an assignment permitted by this Agreement; or
- c. is, as of the time of disclosure, public knowledge without the fault of the disclosing Party.

16.4 Goodwill and Publicity: Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press

releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by applicable law) shall be made by either Party without the prior written consent of the other Party. Without limiting the generality of the foregoing and whether or not the consent of the other Party is required or obtained, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

Article 17 General Provisions and Terms

17.1. Limitations of Liability: Neither Seller nor its employees, its subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder. Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the lesser of the total payments made by Purchaser under this Agreement as of the date that the events that first gave rise to such liability occurred or the total of the prior twelve (12) monthly payments preceding the date that the events that first gave rise to such liability occurred. The provisions of this Section 17.1 shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

17.2. Mediation & Arbitration: If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the Parties agree to endeavor first to settle the dispute by mediation in San Francisco, California administered by the San Francisco office of JAMS before resorting to arbitration. Any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled by arbitration in San Francisco, California administered by the JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If the Parties agree, a mediator involved in the Parties' mediation may be asked to serve as the arbitrator.

17.3. Attorneys' Fees: If the Parties become involved in litigation or arbitration against each other arising out of this Agreement or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award reasonable attorneys' fees to the prevailing Party. Unless judgment is entered by default, the attorneys' fees award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all reasonable attorneys' fees actually incurred in good faith, regardless

of the size of the judgment, it being the intention of the Parties to fully compensate for all reasonable attorneys' fees incurred in good faith.

17.4. No Warranty: NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

17.5. Notices: Notices shall be given by (i) certified mail, return receipt requested, postage paid, or (ii) delivery services such as Federal Express or similar service, or (ii) by facsimile. All notices not delivered by mail shall be deemed received upon actual receipt to the Person to whom the notice is directed. Notices delivered by mail shall be deemed to be received five (5) days after mailing (postage prepaid). Notices shall be addressed as set forth in the Articles of Agreement:

17.6. Survival: All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

17.7. Right of Waiver: Each Party, in its sole discretion, shall have the right, but shall have no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time, provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified.

17.8. Waiver of Breach: A delay or failure to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement or any part hereof or the right of either Party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

17.9. Further Assurances: Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those

provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

17.10. Comparative Negligence: It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

17.11. Non-Dedication of Facilities: Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability.

17.12. Estoppel: Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other Person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

17.13. Service Contract. The Parties intend this Agreement to be treated as a "service contract" within the meaning of Section 7701(e) of the US Internal Revenue Code. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

Schedule 1 Definitions

Whenever used in this Agreement, the following terms shall have the following respective meanings when initially capitalized:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, "control" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. "Control" may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.

"Agreement" means this Solar Energy Purchase Agreement, including the cover sheet and all exhibits, appendices and schedules attached hereto, as the same may be amended from time to time.

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

"Claim" has the meaning set forth in Section 13.2.

"Commercial Operation Date" has the meaning set forth in Section 6.1.

"Condition Satisfaction Date" is specified in Appendix A.

"Confidential Information" has the meaning set forth in Section 16.1.

"Contract Price" means the price payable under this Agreement for electric energy produced by the System.

"Contract Year" means each successive twelve (12) month period during the Term beginning on the Commercial Operation Date and on each anniversary thereof.

"Defaulting Party" has the meaning set forth in Section 9.1.

"Delivery Point" means the delivery point for electric energy generated by the System as shown on Appendix D.

"Effective Date" has the meaning set forth in the first paragraph of this Agreement.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, production tax credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"Environmental Incentives" has the meaning set forth in Section 2.4.

"Event of Default" has the meaning set forth in Section 9.1.

"Extended Term" has the meaning set forth in Section 6.2.

"Facility" means Purchaser's facility more specifically described in Appendix C.

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

equipment not utilized by or under the control of the Party claiming Force Majeure.

"Financing Parties" has the meaning defined in Section 15.2.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"Hazardous Substances" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

"Indemnifying Party" has the meaning set forth in Section 13.1.

"Indemnified Party" has the meaning set forth in Section 13.1.

"Initial Term" has the meaning set forth in Section 6.1.

"Insolation" has the meaning set forth in Section 5.7.

"Insolvency Proceeding" means any case, action or proceeding with respect to a Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors.

"Insolvent" means if a Party (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they come due, (ii) voluntarily ceases to conduct its business in the ordinary course, (iii) commences any Insolvency Proceeding with respect to itself, or (iv) takes any action to effectuate or authorize any of the foregoing; or in the event that (a) any involuntary Insolvency Proceeding is commenced or filed against the Party, or a writ, judgment, warrant of attachment, execution or similar process is issued or levied against a substantial part of the Party's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within thirty (30) days after commencement, filing or levy; (b) the Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (c) the Party acquiesces in this appointment of a receiver, trustee, custodian, liquidator, mortgagee in

possession (or agent therefore), or other similar Person for itself or a substantial portion of its property or business.

"Liabilities" has the meaning set forth in Section 13.1.

"License" has the meaning set forth in Section 5.1.

"License Area" has the meaning set forth in Section 5.1.

"License Term" has the meaning set forth in Section 5.1.

"Non-Defaulting Party" has the meaning defined in Section 9.1.

"Outside Commercial Operation Date" is specified in Appendix A.

"Party" or "Parties" has the meaning set forth in the first paragraph hereof.

"Payment Default" has the meaning set forth in Section 9.1.

"Person" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

"Premises" means the real property upon which the Facility is located.

"Prime Rate" means the rate published in The Wall Street Journal as the "prime rate" from time to time (or, if more than one rate is published, the arithmetic mean of such rates), determined as of the date the obligation to pay interest arises.

"Purchase Option Price" for each potential date the purchase option can be exercised is specified in Appendix A.

"Purchaser" has the meaning set forth on the first page of this Agreement.

"Representatives" has the meaning set forth in Section 16.1.

"Scheduled Outage" has the meaning set forth in Section 5.4.

"Seller" has the meaning set forth on the first page of this Agreement.

"Site Lease" means the lease by Seller of a portion of the Premises on which the System and related equipment and wires are located.

"System" has the meaning set forth in Recital A above.

"Tax Credits" means investment tax credits, production tax credits and any similar tax credits under federal or state law relating to the ownership of or production of energy from solar energy generation systems.

"Taxes" means any and all new or existing ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes or similar charges, and any increases in the same, but "Taxes" does not include income taxes or other similar taxes based on income or net revenues.

"Term" means the Initial Term and any Extended Term(s).

"Termination Payment" has the meaning set forth in Section 9.2.3.

"Termination Value" means, for any given Contract Year, the amount specified in Appendix A.

"Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Facility.



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 Foster City, CA 94044
 Phone: 650-638-1028
 www.solarcity.com

Prepared For: City of Sausalito
 Prepared By: Jennifer Jachym
 Date Prepared: 4/29/2008
 Cumulative Savings: \$741,065
 Net Present Value: \$129,132

Model Assumptions
 System Size in kW DC: 79.0
 Annual Energy Production in kWh: 108,465
 Annual Savings in Utility Bills: \$17,760
 Increase in Utility Rates: 5.7%
 Degradation in Annual Production: 0.5%
 Increase in Annual Savings: 5.1%
 Federal Tax Rate: 0.0%
 State Tax Rate: 0.0%
 Discount Rate: 7.5%
 Cost Per kWh: \$0.165
 Escalation Rate: 4.5%
 Financing Term in Years: 15
 End of Term Buyout Percentage: 20%
 Down Payment: 0.0%

Analysis of Cash Flows of PV System Financed with PPA Sunpower Module Option

Year	Upfront Costs		3rd Party Financing Costs		Buyout	Utility Savings		Depr. Tax Savings		Maintenance Inverter	Total Cash Flow	Discount	Present Value	Cumulative Cash Flow	Current P&E Bill	Total Cash Balance		
	Down Payment	Costs	Tax Savings	Financing Costs		Utility	Increase in	Federal	State									
1												1.000						
2		(\$17,865)				\$17,760					(\$135)	0.990	(\$126)	(\$135)	(\$404)	(\$389)		
3		(\$18,607)				\$18,678					\$72	0.865	\$62	(\$63)	(\$427)	(\$490)		
4		(\$19,346)				\$19,644					\$297	0.805	\$239	\$234	(\$451)	(\$217)		
5		(\$20,115)				\$20,659					\$544	0.749	\$407	\$778	(\$477)	\$301		
6		(\$20,913)				\$21,725					\$812	0.697	\$566	\$1,590	(\$504)	\$1,086		
7		(\$21,743)				\$22,847					\$1,104	0.648	\$715	\$2,694	(\$533)	\$2,160		
8		(\$22,605)				\$24,025					\$1,420	0.603	\$856	\$4,114	(\$563)	\$3,550		
9		(\$23,500)				\$25,264					\$1,763	0.561	\$989	\$5,877	(\$596)	\$5,281		
10		(\$24,431)				\$26,565					\$2,135	0.522	\$1,113	\$8,011	(\$629)	\$7,382		
11		(\$25,397)				\$27,933					\$2,536	0.485	\$1,231	\$10,548	(\$665)	\$9,882		
12		(\$26,401)				\$29,371					\$2,970	0.451	\$1,340	\$13,518	(\$703)	\$12,814		
13		(\$27,444)				\$30,882					\$3,438	0.420	\$1,443	\$16,955	(\$743)	\$16,212		
14		(\$28,527)				\$32,469					\$3,942	0.391	\$1,540	\$20,897	(\$786)	\$20,112		
15		(\$29,652)				\$34,137					\$4,485	0.363	\$1,630	\$25,382	(\$831)	\$24,552		
16		(\$30,821)			(\$110,600)	\$35,890					(\$105,531)	0.338	(\$35,666)	(\$90,148)	(\$878)	(\$81,026)		
17						\$37,732					\$37,732	0.314	\$11,862	(\$42,416)	(\$928)	(\$43,344)		
18						\$39,667					\$39,667	0.292	\$11,601	(\$2,749)	(\$981)	(\$3,730)		
19						\$41,700					\$41,700	0.272	\$11,345	\$38,951	(\$1,037)	\$37,914		
20						\$43,836					\$43,836	0.253	\$11,094	\$38,788	(\$1,096)	\$81,692		
21						\$46,080					\$46,080	0.235	\$10,848	\$28,668	(\$1,158)	\$127,710		
22						\$48,438					\$48,438	0.219	\$10,607	\$177,306	(\$1,224)	\$176,082		
23						\$50,914					\$50,914	0.204	\$10,372	\$228,220	(\$1,294)	\$226,926		
24						\$53,516					\$53,516	0.189	\$10,141	\$281,736	(\$1,368)	\$280,368		
25						\$56,248					\$56,248	0.176	\$9,915	\$337,985	(\$1,446)	\$336,539		
26						\$59,119					\$59,119	0.164	\$9,694	\$397,103	(\$1,528)	\$395,575		
27						\$62,133					\$62,133	0.153	\$9,478	\$459,237	(\$1,615)	\$457,622		
28						\$65,300					\$65,300	0.142	\$9,266	\$524,537	(\$1,707)	\$522,829		
29						\$68,625					\$68,625	0.132	\$9,058	\$593,162	(\$1,805)	\$591,357		
30						\$72,118					\$72,118	0.123	\$8,855	\$665,279	(\$1,908)	\$663,372		
30						\$75,785					\$75,785	0.114	\$8,656	\$741,065	(\$2,016)	\$739,048		
Total																		\$129,132
																		\$741,065

Note: All cash flows represent after-tax cash flows.
 (1) Assumes effective customer tax rate of 0.0%
 SolarCity has used good faith efforts to represent the available tax incentives for solar energy. Your tax situation will impact your ability to benefit from these incentives.
 Please consult your tax advisor regarding your specific tax situation.

Attachment 2A - Cash Flow without REC

6B
 27



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 Phone: 650-638-1028
 www.solarcity.com

Prepared For: City of Sausalito
 Prepared By: Jennifer Jachym
 Date Prepared: 4/29/2008
 Cumulative Savings: \$703,202
 Net Present Value: \$109,164

Model Assumptions
 System Size in kW DC 79.0
 Annual Energy Production in kWh 108,455
 Annual Savings in Utility Bills \$17,760
 Increase in Utility Rates 5.7%
 Degradation in Annual Production 0.5%
 Increase in Annual Savings 5.1%
 Federal Tax Rate 0.0%
 State Tax Rate 0.0%
 Discount Rate 7.5%
 Cost Per kWh \$0.180
 Escalation Rate 4.5%
 Financing Term in Years 15
 End of Term Buyout Percentage 20%
 Down Payment 0.0%

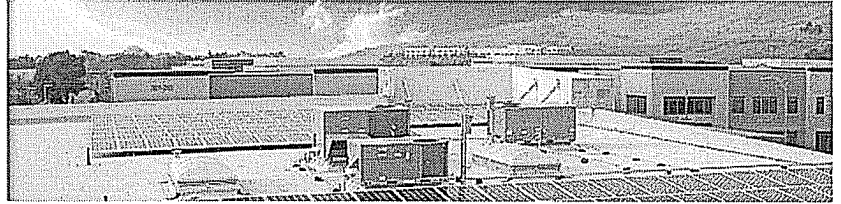
**Analysis of Cash Flows of PV System Financed with PPA
 Sunpower Module Option**

Year	Upfront Costs		3rd Party Financing Costs		Utility Savings		Depr. Tax Savings		Maintenance		Total Cash Flow		Present Value		Current PC&E Bill		Total Cash Balance
	Down Payment	Costs	Tax Savings	Buyout	Utility	Utility Savings	Increase In	Federal	State	Inverter	Cash Flow	Discount	Present Value	1,000	Bill	Balance	
1	--	--	--	--	\$17,760	--	--	--	--	--	(\$1,762)	0.930	(\$1,639)	(\$1,762)	(\$404)	(\$2,166)	
2	--	(\$19,522)	--	--	\$18,678	--	--	--	--	--	(\$1,620)	0.865	(\$1,402)	(\$3,382)	(\$427)	(\$3,809)	
3	--	(\$20,298)	--	--	\$19,644	--	--	--	--	--	(\$1,461)	0.805	(\$1,176)	(\$4,843)	(\$451)	(\$5,294)	
4	--	(\$21,105)	--	--	\$20,659	--	--	--	--	--	(\$1,285)	0.749	(\$962)	(\$6,128)	(\$477)	(\$6,605)	
5	--	(\$22,944)	--	--	\$21,725	--	--	--	--	--	(\$1,088)	0.697	(\$759)	(\$7,217)	(\$504)	(\$7,721)	
6	--	(\$22,815)	--	--	\$22,847	--	--	--	--	--	(\$873)	0.648	(\$566)	(\$8,090)	(\$533)	(\$8,623)	
7	--	(\$23,720)	--	--	\$24,025	--	--	--	--	--	(\$635)	0.603	(\$383)	(\$8,725)	(\$563)	(\$9,288)	
8	--	(\$24,660)	--	--	\$25,264	--	--	--	--	--	(\$373)	0.561	(\$209)	(\$9,098)	(\$596)	(\$9,694)	
9	--	(\$25,637)	--	--	\$26,565	--	--	--	--	--	(\$66)	0.522	(\$45)	(\$9,184)	(\$629)	(\$9,814)	
10	--	(\$27,706)	--	--	\$27,933	--	--	--	--	--	(\$227)	0.485	\$110	(\$8,957)	(\$665)	(\$9,622)	
11	--	(\$28,801)	--	--	\$29,371	--	--	--	--	--	\$270	0.451	\$257	(\$8,387)	(\$703)	(\$9,091)	
12	--	(\$29,939)	--	--	\$30,882	--	--	--	--	--	\$943	0.420	\$396	(\$7,444)	(\$743)	(\$8,188)	
13	--	(\$31,120)	--	--	\$32,469	--	--	--	--	--	\$1,349	0.391	\$527	(\$6,086)	(\$786)	(\$7,872)	
14	--	(\$32,348)	--	--	\$34,137	--	--	--	--	--	\$1,789	0.363	\$650	(\$4,306)	(\$831)	(\$6,147)	
15	--	(\$33,623)	--	(\$115,972)	\$35,890	--	--	--	--	--	(\$113,705)	0.338	(\$38,428)	(\$118,011)	(\$878)	(\$118,889)	
16	--	--	--	--	\$37,732	--	--	--	--	--	\$37,732	0.314	\$11,862	(\$80,279)	(\$928)	(\$81,207)	
17	--	--	--	--	\$39,667	--	--	--	--	--	\$39,667	0.292	\$11,601	(\$40,612)	(\$981)	(\$41,593)	
18	--	--	--	--	\$41,700	--	--	--	--	--	\$41,700	0.272	\$11,345	\$1,088	(\$1,037)	\$2	
19	--	--	--	--	\$43,886	--	--	--	--	--	\$43,886	0.253	\$11,084	\$4,825	(\$1,086)	\$43,829	
20	--	--	--	--	\$46,080	--	--	--	--	--	\$46,080	0.235	\$10,848	\$91,005	(\$1,158)	\$89,847	
21	--	--	--	--	\$48,438	--	--	--	--	--	\$48,438	0.219	\$10,607	\$139,443	(\$1,224)	\$188,219	
22	--	--	--	--	\$50,914	--	--	--	--	--	\$50,914	0.204	\$10,372	\$190,368	(\$1,284)	\$189,083	
23	--	--	--	--	\$53,516	--	--	--	--	--	\$53,516	0.189	\$10,141	\$243,873	(\$1,368)	\$242,506	
24	--	--	--	--	\$56,248	--	--	--	--	--	\$56,248	0.176	\$9,915	\$300,122	(\$1,446)	\$298,676	
25	--	--	--	--	\$59,119	--	--	--	--	--	\$59,119	0.164	\$9,694	\$359,241	(\$1,528)	\$357,712	
26	--	--	--	--	\$62,133	--	--	--	--	--	\$62,133	0.153	\$9,478	\$421,374	(\$1,615)	\$419,759	
27	--	--	--	--	\$65,300	--	--	--	--	--	\$65,300	0.142	\$9,266	\$486,674	(\$1,707)	\$484,967	
28	--	--	--	--	\$68,625	--	--	--	--	--	\$68,625	0.132	\$9,058	\$555,299	(\$1,805)	\$553,494	
29	--	--	--	--	\$72,118	--	--	--	--	--	\$72,118	0.123	\$8,855	\$627,417	(\$1,908)	\$625,509	
30	--	--	--	--	\$75,785	--	--	--	--	--	\$75,785	0.114	\$8,656	\$703,202	(\$2,016)	\$701,186	
Total		(\$389,888)		(\$115,972)	\$1,209,062						\$703,202		\$109,164				

Note: All cash flows represent after-tax cash flows.
 (1) Assumes effective customer tax rate of 0.0%
 SolarCity has used good faith efforts to represent the available tax incentives for solar energy. Your tax situation will impact your ability to benefit from these incentives.
 Please consult your tax advisor regarding your specific tax situation.

Attachment 2B - CASH FLOW WITH REC

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SolarCity Community Solar Program

PROPOSED FOR
City of Sausalito
June 2008

Jennifer Jachym
Solar Sales Consultant
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Attachment 3
4 pages

6B
09



Sausalito Solar Community Program

To extent the benefits of solar power to Sausalito residents, the community program could include the following:

Objective

- Showcase City of Sausalito as an example city on solar adoption, starting with their government buildings
- Encourage residents to install solar on their homes. City goal of xx homes.

Enrollment Criteria

- Open to all Sausalito homeowners (and business owners?)
- Minimum system size of 2.4 kW

Program timing

- Recommended program length 2-3 months, should overlap with city installation. End date should be cognizant of key rebate/incentive dates, such as ITC.

Pricing

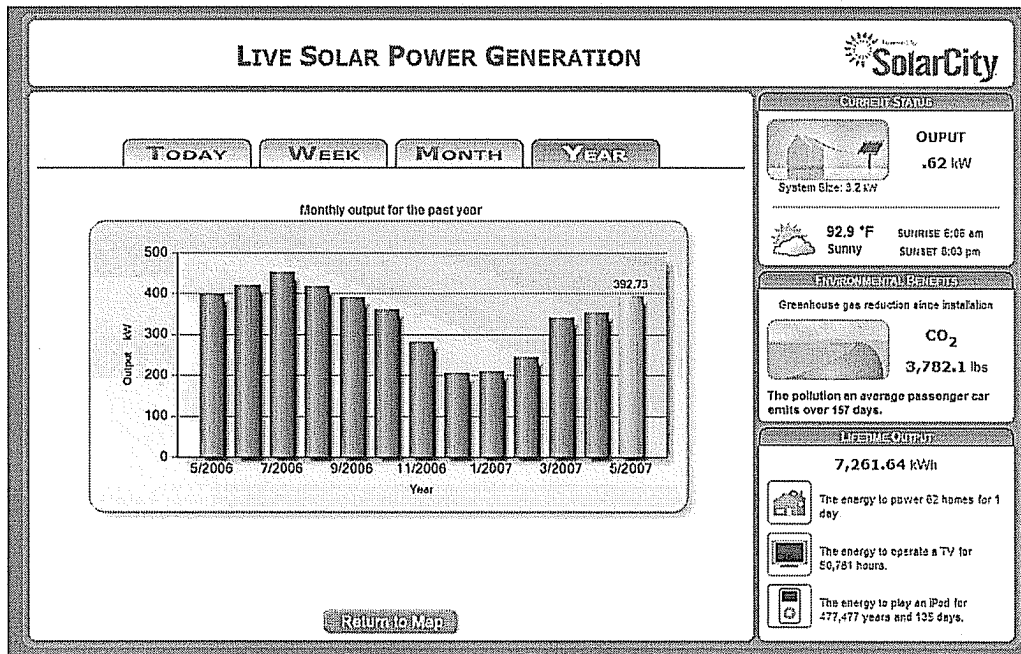
- Participants earn an unprecedented savings compared to current market pricing-- exclusive discount to be agreed upon by SolarCity and City of Sausalito
- (Current programs at \$7.20 kW for cash purchase if reach # home goal or sign in two weeks. SolarLease "Community Pricing" if reach # home goal or sign in two weeks

Key Activities & Resources

- SolarCity will work with local press and community groups to help get the word out.
- SolarCity will host 1 or 2 workshops designed as a general introduction to the environmental and financial benefits of "going solar"

Program Tracking

- SolarCity can create a solar Web Portal dedicated to reporting performance of city installation and individual residential solar arrays



Sausalito City Support

- Program awareness and marketing
 - Issue a joint press release with SolarCity announcing the program.
 - Appoint a spokesperson available to talk with local reporters
 - Post information about the program on their city web page, public bulletin boards
 - If they have a city newsletter, include a write up about the program. And or, email their residence.
 - Include workshops in their community events calendar.
 - Agree to host workshops in their community center or other public venue (waive their rental fee).
 - Introductions to city committees or local community groups interested in environmental issues.
- Program endorsement
 - Sausalito city official commits to putting solar on their roof
 - SolarCity to be the recommended/endorsed/exclusive solar vendor during the program
- Facilitate program
 - Reduce or waive city building permit fees during the program (or for the year)
 - (not sure how easy Sausalito already is to work with) Approve over the counter permits. SolarCity can provide best in class permit examples from other cities, or host an educational workshop with city inspectors.