Solar Power Purchase Agreement (City of San Jose California)

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

Purchaser:		**Seller:**	
Name and Address	**City of San Jose** 200 East Santa Clara St San Jose, California 95113 Attention: Mark Giovannetti	Name and Address	**SolarCity Corporation** 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(408) 575-7052	Phone	(650) 638-1028
Fax	None	Fax	(650) 638-1029
E-mail	mark.giovannetti@sanjoseca.gov	E-mail	Contracts@solarcity.com
Facility Ownership			**Contractor's License Numbers** **CA:** CSLB 888104
Facility Location		Contact Person	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the "**System**") and installed at the Purchaser's facility described in **Exhibit 3** (the "**Facility**").

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

Exhibit 1	Pricing Attachment
Exhibit 2	System Description, Delivery Point and License Area
Exhibit 3	Memorandum of License
Exhibit 4	Credit Information
Exhibit 5	General Terms and Conditions (*Revised August 25, 2011*)
Exhibit 6	Special Construction Provisions
Exhibit 7	Reserved

Purchaser: City of San Jose	**SolarCity Corporation**
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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Exhibit 1
Pricing Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.

2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each.

3. **Environmental Incentives and Environment Attributes Accrue to *Seller*.**

4. **Contract Price:**

Contract Year	$/kWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Includes Automatic Clearing House (ACH) invoicing. If manual invoicing is required, a $25 handling charge will be added to each invoice.

5. **Condition Satisfaction Date:** 180 days after the Effective Date

6. **Anticipated Commercial Operation Date:** 270 days after the Effective Date

7. **Outside Commercial Operation Date:** 365 days after the Effective Date

8. **Purchase Option**

End of Contract Year	Option Price*
Buyout after year 6	
Buyout after year 10	
Buyout after year 20	Fair Market Value

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

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9. Termination Value:

Contract Year	Termination Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

10. Rebate Variance. All prices in this Agreement are calculated based on an upfront California Solar Initiative (CSI) rebate of $0. If the actual rebate is greater than $0, prices will be adjusted pro-rata to reflect the actual rebate received. By way of example only, the following table represents the addition of a $0.05 CSI Performance Based Incentive payable over 5 years to the current pricing in net present value (NPV).

Camden Community Center

	Current Pricing assumes no rebate	**Rebate Pricing** assumes $0.05 PBI over 5 years
Agreement cost/ kWh	$ 0.183	$ 0.166
First year savings	$ 8,636	$ 14,262
20 year cumulative NPV savings*	$ 310,876	$ 418,068

*NPV based on 3.5% discount rate.

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Exhibit 2

System Description, Delivery Point and License Area

1. **System Location:**

2. **System Size (DC kW):**

3. **Expected First Year Energy Production (kWh):**

4. **Expected Structure:**

5. **Expected Module(s):**

Manufacturer/Model	Quantity

6. **Expected Inverter(s):**

Manufacturer/Model	Quantity

7. **Includes:**

SolarCity Limited Warranty, installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system), **prevailing wage construction,** initial tree trimming and removal, and lighting. Other items listed in Exhibit 6.

8. **Excludes:**

Upgrades or repair to customer or utility electrical infrastructure, upgrades or repair to building structure or to roofing system, payment bonds, performance bond(s), ongoing tree trimming and maintenance. Any ADA compliance not specifically identified by the City prior to the conclusion of System design.

9. **Delivery Point and License Area:** SolarCity shall attach a schematic that contains the:

(i) array;

(ii) Delivery Point; and

(iii) access points needed to install and service System (bldg access, electrical room, stairs etc.)

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RECORDING REQUESTED BY AND WHEN RECORDED, RETURN TO:
SolarCity Corporation
Legal Department
3055 Clearview Way
San Mateo, CA 94402

Facsimile: (650) 560-6182
Email: contacts@solarcity.com

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

Exhibit 3
MEMORANDUM OF LICENSE

THIS MEMORANDUM OF LICENSE is made and entered into this _____ day of _____, 201__, (the "Effective Date") by and between CITY OF SAN JOSE, whose address is 200 East Santa Clara St, San Jose, California 95113 ("**Licensor**"), and SOLARCITY CORPORATION, whose address is 3055 Clearview Way, San Mateo, CA 94402 ("**Licensee**").

A. Licensor is the owner of certain real property ("**Premises**"), located in the County of Santa Clara, State of California, attached to this License as Exhibit A and incorporated herein by reference.

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

Licensor and Licensee agree as follows:

1. Licensor hereby grants to Licensee the License over the Premises on and subject to the terms and conditions set forth in the Agreement which is incorporated herein by reference.

2. The term of the License begins on the Effective Date and continues until three (3) years after the Effective Date.

3. This Memorandum of License shall not be deemed to modify, alter or amend in any way the provisions of the License or the Agreement. In the event of any conflict between the terms of the License and/or the Agreement and this Memorandum, the terms of the License and/or the Agreement, as applicable, shall control.

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

LICENSOR	**LICENSEE**
CITY OF SAN JOSE	SOLARCITY CORPORATION
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

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State of _____)
)
County of _____)

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

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

WITNESS my hand and official seal.

_____
Signature of the Notary Public

State of California)
)
County of San Mateo)

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

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

WITNESS my hand and official seal.

_____
Signature of the Notary Public

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Exhibit A
To Memorandum of License

Legal Description of Premises

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

End of Exhibit 3

DRAFT

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Exhibit 4

Credit Information

Promptly following the execution of this Agreement Purchaser shall supply SolarCity with the following credit information:

APPLICANTS INFORMATION							
Name: City of San Jose						**Tax ID:**	
Previous & Other Names:				**Website:**			
Corporate Address: 200 East Santa Clara St							
City, State, Zip San Jose, California 95113							
Phone Number: (408) 575-7052			**Fax Number** None				
Entity Type Check One:	**S-Corp**	**C-Corp**	**Partnership**	**Sole Prop**	**LLC**	**LLP**	**Other**
Property Address for Solar Installation: 3369 Union, San Jose			**State:** California		**Zip Code:** 95124	**Owner Occupied** **YES**	
Property Type	**Insurance Agent Name**		**Agents Phone:**		**Name of Landlord if Not Owner Occupied**		

Information Requested: Please submit the information required below via electronic format to commericalcredit@solarcity.com.

Corporate Records

- □ Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).

Financial Statements

- □ Last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).

SolarCity may request you provide additional documentation to complete the credit evaluation process. SolarCity will notify you if additional information is required.

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

If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact SolarCity at (650) 638-1028, San Mateo, CA 94402. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

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

Signature Title Date

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Exhibit 5

Solar Power Purchase Agreement General Terms and Conditions

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

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "**Term**"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 3** (the "**Delivery Point**"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System.

3. **Term and Termination**.

   a. **Initial Term.** The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1,** unless earlier terminated as provided for in this Agreement. The "**Commercial Operation Date**" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point and that there are no remaining Punchlist Items as certified by Purchaser. Upon Purchaser's request, 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. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

   b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by 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 and length of additional periods specified in **Exhibit 1** (each an "**Additional 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 Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

4. **Billing and Payment**.

   a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the $/kWh rate shown in **Exhibit 1** (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable $/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

   b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii)

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the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility'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. For purposes of this Section 4(d), "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.

d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

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

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. .

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"Environmental Incentives" means any and 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.

"**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.

"**Tax Credits**" means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

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6. Conditions to Obligations.

a. Conditions to Seller's Obligations.

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

i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "**Premises**") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;

ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;

iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;

iv. Receipt of all necessary zoning, land use and building permits;

v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system; and

vi. Seller's agreement following the modification of the System design (for whatever reason) to continue with the construction of the System, it being understood that a community review or ADA redesign could add considerable cost to the System's construction.

b. Conditions to Purchaser's Obligations.

i. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (*See* **Exhibit 1**).

ii. Purchaser shall have the right to terminate this Agreement without cause and without fee or penalty prior to SolarCity's commencement of System design work. Such termination right shall expire upon the commencement of System design work. Purchaser shall provide SolarCity seven (7) days written Notice to Proceed with design work.

iii. Immediately following the conclusion of the final engineering design, and prior to the commencement of construction, Purchaser shall have the right to terminate this Agreement for cause and without fee or penalty if upon the conclusion of the final engineering design, Purchaser and SolarCity mutually determine that the revised pricing will result in the System as installed not providing cumulative savings on the cost of electricity in years 5 through year 20 (using a discount rate of 3%). In all cases the parties shall work together in good faith to avoid any unforeseen changes to the System's design that would prevent a System from providing the expected savings project prior to the engineering design phase.

c. Failure of Conditions.

If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

7. Seller's Rights and Obligations.

a. Permits and Approvals. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

i. any zoning, land use and building permits required to construct, install and operate the System; and

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ii. 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.

b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility in accordance with the provisions of Exhibit 6 (Special Construction Provisions). 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). Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Seller is not responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility known or which should have been known to Seller or due to the material 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. .

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

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

f. **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. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to this Exhibit. All contractors and subcontractors, other than those that may be scheduled on an appendix to this Exhibit, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.

g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to any such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility 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.

Unless otherwise provided in this Agreement, Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Seller shall immediately notify Purchaser in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the dame to be discharged and released of record without cost to Purchaser, and shall indemnify Purchaser 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.

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h. **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. The Limited Warranty SolarCity will provide Purchaser with is a separate contract from this Agreement. No rights provided to Purchaser by the Limited Warranty may be asserted under this Agreement. No warranty is made in this Agreement. Therefore, any warranty claim must be made independently of this Agreement and will not affect Purchaser's obligations under this Agreement.

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

a. **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 Exhibit A to **Exhibit 3** (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 and enforcing all of Seller's rights 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. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is three (3) years following the Effective Date (the "**License Term**"). Thereafter, Purchaser shall have the unilateral right to renew the License for an additional three (3) year term (each such renewal term also a "**License Term**"). Following the termination of any License Term and the failure to renew such License by the Purchaser, the Parties agree to work together in good faith and Lessee shall make best efforts to facilitate access to the Premises and the System to effectuate the rights, duties and obligations under this Agreement. During any 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 during the License Term. Purchaser agrees that Seller may record a memorandum of license in substantially the same form attached hereto as **Exhibit 3** in the land records respecting the License.

b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.

c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to 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 to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

e. **Outages.** Purchaser shall be permitted to be off line for two (2) full twenty-four (24) hour days (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of

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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 Section 4.

f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, 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.

g. **Security.** Purchaser shall be responsible for maintaining the physical security of the Facility and the System. Purchaser will not conduct activities on, in or about the License Area or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.

i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term 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 Section 4.

j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law**.

"**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.

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

10. **Relocation of System**.

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If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with 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 written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to, such rights to be the same as those granted under this Agreement; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties 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, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to **Exhibit 1** such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. 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 and shall be flashed and/or patched to existing roof specifications. 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 ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System. System measurements shall be available online via SolarGuard (or its equivalent) for viewing and download throughout the term of this agreement.

13. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

(1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**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 Default Event, 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 Default Event;

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(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 not 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;

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

(6) Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

(1) Remedies for Payment Default. If a Payment Default occurs, 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.

(2) Remedies for Other Defaults. On the occurrence of a Default Event 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 Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to System Installation a $5,000 design cancellation fee shall also apply in addition to any other remedy available to Seller.

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

A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in **Exhibit 1** (the "**Termination Value"**) for such Contract Year, (ii) removal costs as provided in Section 13(b)(3)(C) and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. 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 Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in **Exhibit 1** is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this

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Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations and Warranties.

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

(1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is 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).

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

b. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

(1) License. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). 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.

(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.

(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.

(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.

(5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. System and Facility Damage and Insurance.

a. System and Facility Damage.

(1) Seller's Obligations. If the **System** is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum

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of the amounts described in Section 13.b(3)A)(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b(3)A)(iii).

(2) Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in **Exhibit 1** and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. Seller's Insurance. Seller shall maintain (i) property insurance on the System for the replacement cost thereof, (ii) comprehensive general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (iii) employer's liability insurance with coverage of at least $1,000,000 and (iv) worker's compensation insurance as required by law.

ii. Purchaser's Insurance. Purchaser shall maintain (i) comprehensive general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least $1,000,000 and (iii) worker's compensation insurance as required by law.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, terminated or materially altered, (ii) be written on an occurrence basis, (iii) 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, (v) provide for primary coverage without right of contribution from any insurance of the other Party, and (vi) 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.

d. **Certificates.** Within thirty (30) days after execution of this Agreement and upon the other Party's request and annually thereafter, each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

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16. Ownership; Option to Purchase.

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

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

17. Indemnification and Limitations of Liability.

a. General. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the 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 any third party actions relating to the breach of any representation or warranty set forth in Section 14 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 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

b. 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

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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 17(b) 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 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **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 (as defined in Section 17(c)(i)) to the extent deposited, spilled 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 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 Hazardous Substance on or about the License Area or the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. "**Hazardous Substance**" 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.

d. **Limitations on Liability**.

i. No Consequential Damages. Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.

ii. Actual Damages. 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 (A) the total payments made by Purchaser under this Agreement as of the date that the events that first gave rise to such liability occurred; and (B) 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)(d)(ii) 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.

18. **Force Majeure**.

a. **Force Majeure Event"** means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such

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Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit. A Force Majeure Event shall not be based on the economic hardship of either Party, except as described in the following paragraph. Due to the constitutional limitations on cities pertaining to multiple year contracts, a Force Majeure event shall include a "budget non-appropriation event" in which the City's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for City. During the continuation of a budget non-appropriation event as defined above, if the City does not otherwise have other funds available to make payments otherwise due on this Agreement, the City shall not be obligated to pay for (and the Seller shall not be required to deliver) electric energy provided under this Agreement until the budget non-appropriation event has terminated. City agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Purchaser) may terminate this Agreement.

b. **Excused Performance.** Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

c. **Termination in Consequence of Force Majeure Event.** If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Seller. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

19. **Assignment and Financing**.

a. **Assignment**. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld 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.

b. **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.

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20. Confidentiality and Publicity.

a. Confidentiality. Except as prohibited by law, 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 Section 20(a), except as set forth in Section 20(b). 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 20(a) 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 20(a). 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 20(a), but shall be in addition to all other remedies available at law or in equity.

b. 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 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. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law. Seller further acknowledges that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information that a Seller provides as confidential is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Seller with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

21. Goodwill and Publicity. 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.

22. General Provisions

a. Choice of Law. The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.

b. Arbitration and Attorneys' Fees. Any dispute arising from or relating to this Agreement shall be arbitrated in San Jose, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

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

d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).

e. **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

f. **Right of Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

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

h. **Non-Dedication of Facilities**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

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

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requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

j. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

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

l. **Full Agreement, Modification, Invalidity, Counterparts, Captions**. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

m. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

n. **No Third Party Beneficiaries**. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

o. **Gifts.** (a) Seller is familiar with Purchaser's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. (b) Provider agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. (c) The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Seller. In addition to any other remedies Purchaser may have in law or equity, Purchaser may terminate this Agreement for such breach as provided in this Agreement.

p. **Disqualification of Former Employees.** Provider is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). Provider shall not utilize either directly or indirectly any officer, employee, or agent of City to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

q. **Nondiscrimination and Non Preferential Treatment** (a) Seller shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin. This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability. (b) If directed by the Compliance Officer of City, Seller shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether Seller or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code. (c) If the Compliance Officer determines that Seller has not complied with the nondiscrimination or nonpreferential treatment provisions of this Agreement, the Provider may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Provider and/or its subcontractor(s) to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor. (d) Provider shall include provisions 1 through 3, inclusive, in each subcontract entered

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into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors. (e) The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the Seller has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Seller or other governmental agency are substantially the same as those imposed by the City.

End of Exhibit 5

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Exhibit 6
Special Construction Provisions

PV Basis of Design and Project Implementation Guidelines

1. Basis of Design
   - 1.1. Installation shall comply with all applicable codes and standards, including but not limited to applicable building and fire codes and City of San Jose Department of Public Works Standard Specifications and Standard Details.
   - 1.2. Design submittals shall include engineered structural, seismic, wind load, and electrical details and calculations as required by City.
   - 1.3. Contractor shall maximize the placement of PV panels on a building's existing flat roof and/or metal roof system. Any proposed PV installation system shall consider the visual impact to building entrance(s) and preservation of pedestrian and vehicle approach vistas at each property line entry point by maximizing the view of the building entry and each of the building elevations.
   - 1.4. Any added structures or elements, along with their details are to be chosen specific to the facility; consistent with the architectural style of the facility including proposed materials, shapes, vocabulary, hierarchy of elements, massing, color and details.
   - 1.5. Upon City's discretion, contractor may be asked to support two (2) public outreach meetings. The first meeting shall be used to present the City approved design options to solicit public feedback. The contractor shall incorporate the public comments into a final design to be presented in the second meeting. The documents may include three dimensional color perspective renderings in both print and electronic format for all publicly viewable angles. Any changes to System design that affect the System's cost shall be incorporated into the System's pricing.
   - 1.6. Any areas modified during the construction process shall be restored to the pre-existing or better conditions per City standard specifications.
   - 1.7. Design of the PV panel layout shall follow guidelines established by the California Department of Forestry and Fire Protection - Office of the State Fire Marshal (CAL FIRE-OSFM), Draft Solar Photovoltaic Installation Guideline, 2008. Particular attention shall be made to PV system markings and labeling, access, pathways and smoke ventilation requirements. PPA owner's contact information shall be clearly labeled at all inverter, disconnects and main interconnection points.
   - 1.8. Minimum 4 feet clearance is required around skylights. OSHA approved fall protection devices shall be provided for the skylights upon completion of the project.
   - 1.9. If located outside the building, inverter shall be installed no less than 2.5 feet from the building wall, no less than 6 feet from the nearest entrance. Inverter shall be protected with bollards placed no more than 4 feet apart. Inverters shall be protected from the elements by the building's own roof or an appropriately-sized shade structure.
   - 1.10. If canopies are installed, energy efficient lighting shall be required to restore illumination levels to pre-existing or better conditions before the PV installation. If pre-existing lighting was not present, supply sufficient lighting to provide 2-3 foot candles when measured 28" from the ground. Where light poles are removed, pole bases, conduits, and wiring will remain in place. New junction boxes will be installed on the bases to protect the existing conduit and wiring. This is required to insure source and branch circuits beyond the PV installation areas are not interrupted.
   - 1.11. Seller shall use commercially reasonable efforts to design and construct the System such that the visibility of conduits and raceways shall be minimized.
   - 1.12. Installer shall provide one empty electrical conduit stubbed at the base of each contiguous canopy section and run parallel to the installer's conduit to its endpoint. Conduit shall be 3/4 inch diameter or equivalent in size to installers smallest size electrical conduit.
   - 1.13. Data communications cable, shall be installed in minimum 3/4 inch, dedicated conduit.
   - 1.14. Canopy structures in parking lots shall be center post cantilever construction.
   - 1.15. Canopy structures and all installed components shall be designed to provide vertical clearance appropriate for site per City approval.
   - 1.16. Exposed metals shall be corrosion resistant or painted to City approved finishes.

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2. Project Implementation

2.1. Initial plan review shall require a minimum two week period. The City will review one re-submittal, if needed. Upon approval of an "acceptable submittal package", contractor shall be issued a Public Works permit and a Notice to Proceed (NTP). Plans/specifications submittal documents shall include at a minimum:

2.2. General site plan showing building/property layout, locations of PV panel and inverter installations, interconnection points, and conduit routing.

2.3. PV module layouts on building rooftops and/or carports, and location of Balance of System components, disconnecting means and over-current protection devices.

2.4. Construction details of inverter anchorage, weather proofing of roof penetrations, shade structures if applicable, interconnection of elements (uni-struts, clamps, support rails, etc), method of mechanical attachment to supporting structural elements, footings, slabs, concrete pads, canopy systems, canopy lighting, racking systems, conduit attachment/installation including trenching details, safety devices ("WhirlieBirds" personal fall arrest system, skylight fall protection cages), bollards, module/equipment grounding and bonding, meters, communications and monitoring systems, notes, single line diagrams, conductor schedules, any applicable BMP/SWPPP requirements. Specifications must include information for the proposed PV panels, inverters, combiners, racking/ballast systems, conduit types, safety devices (fall protection), canopy lighting (if required), special use hardware such as grounding lugs and mounting clamps, switchboard/disconnects, labeling requirements and all pertinent structural calculations verifying capacity of proposed system to resist vertical, lateral and seismic loads.

2.5. Water Pollution Control Plans showing temporary erosion and sediment control work consistent with Best Management Practices (BMP's) established in the Erosion Control and Sediment Control Field Manual, 3rd Edition and the California Stormwater BMP Handbook, Construction, prepared by the California Regional Water Quality Control Board, San Francisco Bay Region.

2.6. Approved construction schedule and preliminary construction phasing plan coordinated with the City project manager.

2.7. The City shall undertake best efforts to provide SolarCity with any existing information in its custody, possession or control with respect to the current conditions at the License Area. The City shall undertake commercially reasonable efforts to provide SolarCity with any additional information SolarCity requests regarding the current conditions at the License Area. Any unforeseen conditions encountered in the field during construction shall be discussed by the parties promptly upon the first discovery of such condition by either Party. Both Parties shall cooperate and work together in good faith to resolve such condition with the minimum of cost and disruption to the construction of the System. Though SolarCity shall bear the sole responsibility for any additional costs to the construction of the System as result of unforeseen conditions at the License Area, SolarCity shall have the right to terminate this Agreement and return the License Area to its original state if it determines in good faith that the cost to remediate any such unforeseen conditions make the completion of the System fiscally unsound.

2.8. A preliminary construction phasing plan, showing at minimum temporary fencing and signage, barricades, fire lane clearances, and security measures, shall be submitted as part of the initial plan review. Such plan should be coordinated with the City project manager, and submitted to PW prior to permit issuance.

2.9. Contractor shall exercise state-of-industry, construction practices to install PV panel requiring minimal penetrations to the existing roof. If penetration is to be performed, a letter of certification is required from the roof manufacturer verifying the contractor's ability to perform such tasks. Seller shall cooperate with the City's licensed roofing contractor to seal all roof penetrations at no cost to City.

2.10. A pre-construction meeting shall be scheduled minimum 1 week prior to start of construction to discuss and finalize at a minimum, construction schedule, construction hours, phasing plans, roles and responsibility, contact information, inspection requirements and follow-up action items. This meeting shall be conducted by the assigned City project manager.

2.11. Prior to beginning of construction, a phasing plan addressing parking, storage and staging areas, site security, cleanliness, traffic control, temporary fencing, lighting and signage, access and logistics must be coordinated and approved by the City project manager. Contractor shall reference the City Standard Specifications for applicable requirements. Minimum 48 hours notice is required prior to the removal or addition of temporary construction fencing that may impact access to the building and/or the availability of onsite parking. Contractor shall bear all costs and responsibility related to the procurement and installation of temporary signage, fencing and lighting.

2.12. Weekly construction meetings shall be conducted and chaired by the contractor assigned project manager and shall include at minimum, project superintendant, and representative of the system owner.

2.13. Project must at all times maintain fire lanes minimum 20 feet wide and 14 feet high.

2.14. Contractor shall control storm water run-off on site and observe all Best Management Practices (BMP's) as established in the plan submittals. These erosion and sediment control measures shall control and contain erosion-caused silt deposits and provide for the safe discharge of silt-free storm water into existing storm drain facilities. Contractor shall be responsible for ensuring that all sub-contractors, and suppliers are aware of all storm water quality measures and that they implement such measures. Failure to comply with the stormwater quality regulations and specifications will result in the issuance of correction notices, citations and/or a project stop order.

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2.15. Proper safety equipment and practices conforming to Cal/OSHA requirements must be followed at all times. Contractor is the sole party responsible for maintaining safe construction practices, including but not limited to, providing barricades and/or fencing where necessary to limit or restrict non-construction activities, provide lines and points of demarcation, and ensuring site security where required.

2.16. Power shutdowns must be coordinated with the City project manager and be conducted on weekends to the extent feasible to minimize impact to regular operations. Contractor will assume responsibility in shutting down power to the building's facilities. A shut down procedure shall be provided by contractor and approved by City.

2.17. Approximately one month prior to the scheduled interconnection, contractor shall coordinate with City personnel to perform a mock shutdown to establish proper shutdown procedures, assess potential issues and/or address any discovered deficiencies.

2.18. Any recommendations to address unforeseen conditions shall be submitted by the contractor to the City project inspector for approval. The contractor shall bear all costs associated with unforeseen conditions discovered during the construction.

2.19. Contractor shall be responsible for coordinating with all utilities that may impact the project completion, including but not limited to PG&E, San Jose Municipal Water, AT&T, Comcast.

2.20. At the completion of the project, contractor shall conduct a field walk-though with City to generate a final punch list. All items on the punch list must be addressed to the satisfaction of the City before project acceptance is granted.

2.21. Contractor shall submit to City within 2 weeks of project acceptance accurate as-built drawings of the completed project. Upon project completion, contractor shall submit all underground work information (as-builts) associated with the project to USA for record keeping.

2.22. In addition to maintenance of the PV arrays, inverters, combiners, the PPA owner shall be responsible for maintenance of all related underground facilities, including but not limited to conduits and pullboxes.

2.23. Upon the Commercial Operation Date, but prior to the System Interconnection, SolarCity shall provide the City with seven (7) days to create a punchlist of open construction items that require attention and remediation. SolarCity shall promptly begin addressing the punchlist items upon receipt and shall endeavor to remediate all such items within seven (7) days of receiving the punchlist, provided, however, that SolarCity's failure to remediate all such punchlist items where beyond its reasonable control (ie. a part is on back order or City cooperation is required) shall not delay the System's Interconnection or the City's obligation to pay for the production of power under this PPA.

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Prevailing Wages

Attention is called to the fact that State of California Prevailing Wage Rate requirements apply to this project. Copies of the General Prevailing Wage Determinations made by the California Director of Industrial Relations are available at the Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San Jose CA 95113-1905. All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-535-8430. Prior to contracting with a third party for the construction of the Improvements, Lessee shall notify the City of San Jose's Office of Equality Assurance and provide a detailed scope of the work to be performed. The City of San Jose's Office of Equality Assurance will issue a Classification Determination for the work to be performed.

In the performance of this Agreement:

Standards of Responsibility: Prevailing Wages (Municipal Code 4.10.200)

The City requires in all of its procurement procedures that all persons who submit bids, proposals or offers to enter into a contract with the city to do so truthfully and in good faith, and shall not attempt to mislead the city with respect to the following including, but not limited to, records regarding the nature or quality of the work performed under the contract, payroll records, classification of employees on payroll records, and payment of prevailing wages where called for by the contract.

Remedies For Contractor's Breach Of Prevailing Wage/Living Wage Provisions

A. General: Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement ("Document Provision"). Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose. It increases the ability of such workers to attain sustenance, decreases the amount of poverty, and reduces the amount of taxpayer funded social services in San Jose.
4. It increases competition by promoting a more level a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment: Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Prevailing Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of the City's obligation to make each payment due the Contractor pursuant to this Contract. The City is not obligated to make payment due the contractor until contractor has performed all of its obligations under these provisions.

Any payment by the City, despite Contractor's failure to fully perform its obligations under these provisions, shall not be deemed to be a waiver of any other term or condition contained in this contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

C. Liquidated Damages For Breach Of Wage Provision: Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and the City's damage would not be remedied by contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

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D. Audit Rights: All Records or documents required to be kept pursuant to this contract to verify compliance with the Wage Provision shall be made available at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to the City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this contract.

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Exhibit 7

Purchaser's Insurance Requirements

INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract (or for such longer periods as may be specified below) insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and

2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees and agents if the reduction or elimination of such deductible or self insured retention is deemed a reasonable request by both parties, and commercially available from insurer; or the Contractor shall procure a bond or letter of credit guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

a. The City, its officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or

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borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees and agents.

b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and, agents. Any insurance or self-insurance maintained by the City, its officials, employees and agents shall be excess of the contractor's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees and agents.

d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees and agents.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

5 Acceptability of Insurance

Insurance is to be placed with insurers with an A.M. Best's rating of A-VII or higher.

6 Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

7 Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

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