



Agenda Item No: \_\_\_\_\_

Meeting Date: July 21, 2014

## SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: CITY MANAGER

Prepared by: Rebecca Woodbury,  
Management Analyst

City Manager Approval: \_\_\_\_\_

**SUBJECT: RESOLUTION APPROVING A POWER PURCHASE AGREEMENT FORM AND SCHEDULING A PUBLIC HEARING TO CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE SITE SPECIFIC POWER PURCHASE AGREEMENTS WITH SOLED BENEFIT CORPORATION**

### RECOMMENDATION:

Adopt the attached Resolution approving the form of Power Purchase Agreement subject to final approval by City Attorney and directing the City Clerk to schedule a public hearing for the City Council meeting of August 18, 2014 to consider authorizing the City Manager to execute site specific Power Purchase Agreements with SolEd Benefit Corporation.

### BACKGROUND:

The City adopted a Climate Change Action Plan in 2009. This plan includes three programs that have provided the impetus to pursue solar power generation on City facilities and a collaborative procurement process:

- BU – 5 Develop a program to achieve energy savings in existing buildings, with a goal of decreasing energy use by 20% as of the year 2020.
- BU – 7 Complete the energy audit of major City buildings and facilities to identify opportunities for efficiency measures and renewable power generation opportunities and develop an implementation plan for upgrades.
- CO – 5 Continue to provide a leadership role with other local governmental agencies to share best practices and success.

Solar energy projects will help the City attain its goal to achieve energy savings and generate renewable power. In addition, by acting as the coordinating agency of a collaborative procurement project the City has taken on a leadership role in this three-county effort to procure solar for public agencies.

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### FOR CITY CLERK ONLY

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

In 2012, Strategic Energy Innovations (SEI) and Optony formed the SEED Fund which stands for Sustainable Energy & Economic Development Fund. Using a grant from California Solar Initiative, they created a program for public agencies to participate in a regional group purchase of municipal solar projects. The program leverages the grant funding to defer upfront funds for planning, site assessments, and procurement activities while providing technical expertise and best practice knowledge.

In November 2012, the City Council first authorized a Memorandum of Understanding (MOU) with the SEED Fund to participate in the collaborative procurement project. In February 2013, the City Council Sustainability Subcommittee (comprised of Councilmembers Connolly and Colin) included as high priority in their annual workplan the issuance of a Request for Proposals (RFP) for the SEED Fund Project. Then in March of that year the City agreed to take on the role of coordinating agency for the project. By taking this on, the SEED Fund waived the revolving fund reimbursement costs as well as provided the City with some funds for third party consulting.

This solar procurement effort has been guided by the members of the SEED Fund team: Strategic Energy Innovations of San Rafael and Optony Inc. of Santa Clara. That team reached out to over 200 public agencies in Marin, Sonoma, and Napa Counties, and performed site feasibility reviews on over 100 potential solar sites, in order to put together the group procurement. The SEED Fund team performed much of the work around development of the RFP, and they helped answer questions for both potential vendors and the Selection Committee reviewing proposals. The opportunity to work with the SEED Fund collaborative, along with the funds provided to the City through the program, were greatly beneficial to City staff. At little cost to the City, staff was able to take advantage of expert technical and legal consultant services.

In October 2013, the City issued an RFP on behalf of 12 other public agencies in Marin, Sonoma and Napa Counties. The other agencies include: City of Mill Valley, Marinwood Community Services District, Southern Marin Fire Protection District, City of Novato, Marin Healthcare District, Sonoma County Water Agency, County of Sonoma, Sonoma County Employee Retirement Association, Town of Yountville, Napa County Office of Education, City of St. Helena, and City of Cotati.

The RFP included a Marin bundle as well as a Sonoma / Napa bundle of sites. Proposers could bid on either or both bundles of sites. Since this is an energy project, the RFP process could rely upon Government Code sections 4217 *et seq.*, which allow a public agency to select a vendor based on qualifications and best value rather than just best price as is the case with many public contracts. Staff sent the RFP out to hundreds of vendors, including clearinghouses, and garnered strong interest. Ultimately the RFP received 4 proposals, 3 of them proposing on the Marin bundle. In December and January the City along with a multi-agency evaluation team reviewed the proposals, interviewed firms, and selected preferred vendors. The evaluation team was made up of Rebecca Woodbury and Kevin McGowan from the City of San Rafael, Ron Peluso of Marin Healthcare District, Sam Ruark of County of Sonoma, Rebecca Simonson of Sonoma County Water Agency, and Rafael Silberblatt and Kirby Dusel of Marin Clean Energy (MCE). The evaluation team scored the vendors on qualifications and experience, financial stability, their technical proposal, project costs, implementation plan and schedule, local hiring policies, and contract terms and conditions. The preferred vendor scored highest overall. The preferred vendor team is composed of Sunetric, SolEd Benefit Corporation, and Danlin Construction.

*Sunetric* is a solar development firm with offices in San Francisco and this project is managed by a San Rafael- and San Anselmo-based team. They focus on mid- and large-scale solar for municipal and commercial clients, and would manage the engineering, procurement and

construction oversight of the project. Sunetric would also provide the on-going operations and maintenance (O&M) services to SolEd, the owner of the solar system, in parallel with it carrying equipment and workmanship warranties.

*SolEd Benefit Corporation* (SolEd) is a solar financier based in San Rafael. The company originated in the Venture Greenhouse Dominican Green Business program and its goal is to provide clean energy at low cost to municipal, school and large non-profit clients. Project team members are residents of San Rafael and Corte Madera. SolEd would own the solar systems, and contract with Sunetric to provide operation and maintenance services for the solar systems. SolEd would be the energy “Seller” under the proposed Power Purchase Agreement (PPA).

*Danlin Solar* is a San Rafael-based electrical contracting firm with experience in commercial and municipal solar installations. Danlin would be responsible for the construction and installation of the solar systems under Sunetric’s management.

Over the past year staff has periodically checked in and provided updates to the City Council Sustainability Subcommittee and have also provided updates at the City’s quarterly Climate Change Action Plan community meetings.

On March 17, 2014 the City Council held a special study session to review progress of this project. The City Council provided staff direction to pursue all proposed sites and to bring forward details regarding financing mechanisms to the City Council Finance Committee. On April 10 the Finance Committee reviewed the financing mechanisms in detail and recommended that staff develop a Power Purchase Agreement for full City Council approval.

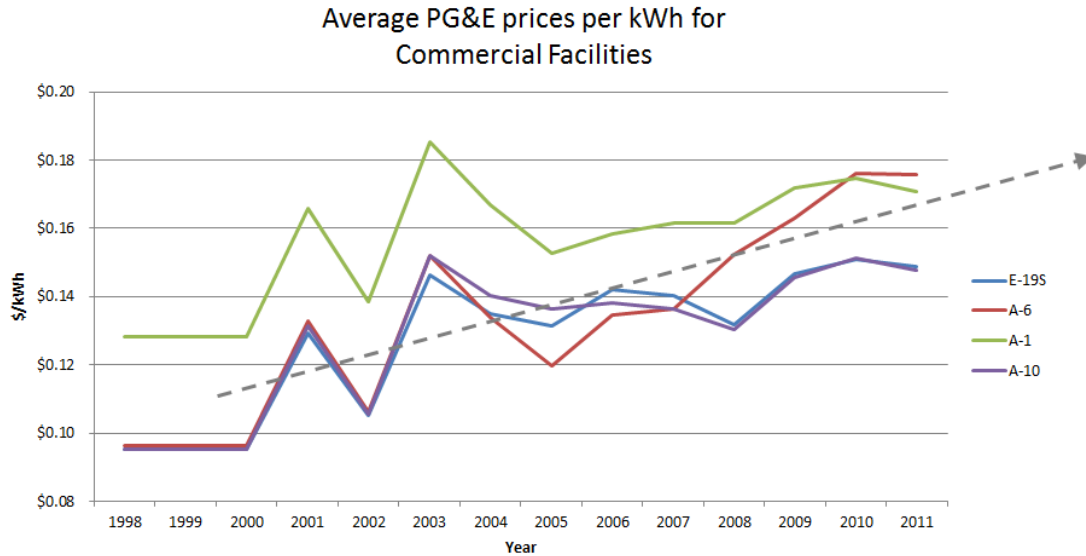
Another high-priority item on the City’s Sustainability Subcommittee’s work plan for 2014 is to investigate moving some or all of the City’s facilities and accounts to Marin Clean Energy’s Deep Green power option. The City’s General Plan element SU-13 calls for switching all City accounts to the Deep Green option (100% renewable power) by 2020. There are some natural linkages between transitioning to Deep Green and this solar project, since the power purchased for Deep Green is on average approximately one cent more per kilowatt hour. Reducing our power purchase requirements through solar means that moving to Deep Green at the same time will cost less due to the fact that the amount of power we will need to purchase from the utility will be significantly less overall.

## **ANALYSIS:**

### **General Information about Solar Energy**

*Environmental.* Solar energy is a renewable energy source meaning it is being constantly replenished and cannot be depleted as is the case with fossil fuels. By generating its own electricity the City can reduce consumption of fossil fuels, therefore minimizing the emission of pollutants and greenhouse gases. The manufacture of solar modules does however produce greenhouse gases and it can take 1 to 1.5 years for most solar modules to produce the energy required to manufacture them. See the “Environmental and Design Review” section of this report for San Rafael-specific information.

*Financial savings.* The graph below shows that since the year 2000 the trend has been for PG&E’s electricity rates to increase and many experts project that this trend will continue.



As the above graph shows, prices had remained fixed before the electrical utilities were de-regulated around the year 2000. After several years of rapidly fluctuating prices, energy prices have now settled into a general upward trend that averages around 4% increase per year. Solar power generation would allow the City to lock in a low electricity rate, hedging against anticipated future utility rate increases.

Solar energy systems produce their greatest output during the time of day and season which PG&E has the most demand spike in customer loads. During Peak rate time of PG&E tariffs, the solar is producing at maximum production. Therefore facilities with solar power are able to not only eliminate peak demand spikes but can also be credited back for that high-value production window from PG&E, at a premium, not non-Peak rates as energy demand spikes.

*Reliable Technology.* Solar is a reliable technology that has been around popularly since about the 1970s. A well-maintained system can last 25-40 years and it's a straight-forward technology that is easily maintained. The vendor has proposed using high quality modules from a U.S. based manufacturer. Suniva modules are built in Georgia, and are on the high end of module performance, with modules averaging 19% efficiency.

### Proposed Sites

This procurement process included several City facilities including City Hall, the Department of Public Works building on Morphew Street, our Community Centers, and parking garages. At this time, staff is recommending to proceed with all sites in the order of which site specific issues are resolved. The following table shows all of the sites, site specific issues, and the anticipated phase in terms of construction. For additional site specific information including conceptual drawings and some renderings, see Attachment 3.

Site	Type	System Size (kW)	Annual GHG reduction (tons)	Site Specific Issues	Phase
City Hall	rooftop, carport	317	203	Some tree work required; roof may be in need of replacement	1
Department of Public Works (Morphew Street)	rooftop	193	115	Work with property owner on site design	1

Terra Linda Community Center	carport	98	62	Some tree work required	1
San Rafael Community Center (B Street)	rooftop	77	49	Roof may be in need of replacement	2
Albert J. Boro Community Center	rooftop	87	59	Pending structural feasibility analysis; roof may be in need of replacement	2
A & C Street Parking Garages	carport	144	98	Need determination regarding legislation to allow contiguous parcels to use one meter.	2

The installation of these projects will be phased and coordinated through the Public Works Department. Construction for each site is expected to take approximately 2-3 months and impacts may include temporary loss of parking and temporary road closures. It is expected that actual construction would be seen on Phase 1 sites no earlier than Spring 2015.

The proposed solar projects are Net Energy Metering (NEM) projects. The utility's NEM program provides the most financially beneficial way to implement renewable generation at the proposed facilities. The vendor has not recommended a large system feeding directly to the utility (similar to the solar system at the San Rafael Airport) because the City facilities lack the large amount of available space and because the flat rate the City would be compensated for the energy would not effectively offset the cost to build the projects.

#### Power Purchase Agreement

At a March 17 Study Session, the City Council was presented with four financing mechanisms that included a power purchase agreement, a power purchase agreement with a prepayment, direct purchase, and a municipal lease. Staff concurs with the recommendation of the City Council Finance Committee to move forward with the PPA option with no prepayment.

Through a PPA, the City would enter into a service contract to purchase all of the energy produced by the on-site solar system. The year-one cost per kWh is fixed, as is the annual escalation percentage and term. This option requires no capital investment. The City would not own, operate, or maintain the equipment. Because the PPA provider (SolEd, the system owner) does not get paid unless the system performs, they have a strong incentive to maintain the system. All of the ownership risk resides with the PPA provider. At the end of the PPA contract, and at specified intervals during the contract, the City may purchase the solar system from the PPA provider for an agreed upon price that is at least the Fair Market Value (FMV) of the system at that time. Since SolEd's PPA energy price decreases significantly after year 15, the FMV of the system is low at the end of the contract.

A PPA allows the City to receive solar generated power without capital investment by agreeing to purchase the power at an established price for a fixed term. The following factors support the use of a PPA:

1. While the direct purchase option is feasible for the City, there are other identified high priority capital needs/projects and therefore the PPA option is preferable from a cash-flow perspective.
2. The primary motivating factor of this project is renewable power generation as opposed to ownership of solar projects. Additionally, ownership requires City maintenance of systems, whereas, under a PPA, the PPA provider takes all responsibility for maintenance. The City only pays for energy that is produced, so, if a system does not perform, the PPA provider does not get paid and the City reverts to purchasing energy from the utility.
3. If the City were to pursue the direct purchase option in order to increase financial savings, it should be noted that the financial impacts are not guaranteed and are based on a set of

assumptions related to utility cost inflation, energy usage and continued use of the facility by the City. Because of this, Staff feels that the most prudent approach is to minimize up front financial investment.

4. The difference between the projected savings for making no prepayment and making a prepayment is not significant over the length of the contract and therefore no prepayment is preferable.

#### Economic Analysis

Under the PPA, the solar systems are anticipated to result in net savings to the City, starting in the first year. Specific details for pricing at each site can be found in Attachment 5. The PPA pricing includes a 2.5% escalator for years 1-15 and a 10% de-escalator for years 16-20.

In year one the cost of energy for all proposed sites would be approximately \$280,000. Under our current rates, we would pay approximately \$309,000 creating a savings of \$29,000 in the first year. Over the course of the 20 year agreement, we would pay about \$6.6 million for energy for the selected sites. This includes a small residual bill with PG&E. The projects have an anticipated savings of approximately \$1 million over the course of the 20 year agreement. This represents a savings of approximately 20% from anticipated PG&E rates. If the City elects to extend the agreement for 5 years, the anticipated savings is \$1.6 million. The projected savings are based on a 4% utility cost escalator and using a Net Present Value (NPV) of 4%. Attachment 5 shows an NPV of 8% as well.

The ultimate savings will depend on the actual rates imposed by PG&E during this time period and actual energy usage (which will be affected by the longevity of the City's use of the improved facilities), therefore actual savings will vary.

Additionally, since the City has sought solar procurement under collaboration with other regional public agencies, SolEd has offered the group a discount for projects executed on specific timelines over the next several months. These discounts are tiered to give the highest discounts to projects that move forward quickly, with lower discounts for projects that move forward toward the end of the year. These discounts would be applied to the base rates included in Attachment 5. The discounts offered are as follows:

1. If 2 megawatts (MWs) or more are signed by September 30, 2014: An additional 10% discount on base rate/kWh on those sites.
2. If between 1 and 2 MWs are signed by September 30, 2014: An 8% discount on base rate for those sites, and any other agencies signing by October 31, 2014.
3. If more than 1 MW is signed by September 30, 2014, any agencies signing between November 1 and November 30, 2014 would receive a 6% discount on starting rate.
4. If more than 1 MW is signed by September 30, 2014, any agency signing a PPA between December 1 and December 31, 2014 would receive a 5% discount.

Furthermore, any agency signing a tax exempt Lease or Purchase will receive a 5% discount to quoted rates, if at least 1 MW of PPAs are signed by September 30, 2014. Otherwise, in all cases, base rates apply.

Staff and the SEED Fund Team believes all San Rafael sites as well as several sites from the other participating agencies, exceeding 2 MWs in total size can be ready by the first deadline for the execution of the PPA contracts.

Legal and Other Contract Considerations

With the availability of funds provided through the SEED program, and with an additional substantial and generous donation of pro bono legal services from David Stoll and Kelly Giddens at the law firm of Farella Braun + Martell LLP, the City has obtained extensive, expert legal services for the negotiation and drafting of the PPA. The resulting PPA, set forth in Attachment 2, presents a set of terms which the attorneys believe to be fair to the City, financeable for the solar company, and reflective of similarly situated PPAs.

At this time, the PPA is in a form that allows the City to proceed with individual sites one by one. A separate PPA may be approved for each specific site as soon as the technical specifications for the site are finalized. Therefore, staff is recommending that the City Council approve the attached PPA in form, subject to the final approval as to form by the City Attorney, and direct the City Clerk to schedule a public hearing for the City Council to consider authorizing the City Manager to execute site specific agreements.

*Opportunities to terminate agreement.* The proposed PPA contains multiple provisions that would allow the City to terminate the agreement. The City may terminate the contract:

- at any time at its option by delivering notice of termination to SolEd and paying an agreed upon termination fee;
- without further liability if its conditions precedent are not met by the date that is 180 days after the PPA's execution date;
- without further liability upon an event of default by SolEd; and
- without further liability if SolEd cannot perform for a period of 180 days within a 12 month period due to a force majeure event.

*End of contract term.* The PPA is for a 20-year term. There are three potential options for the City at the end of the term (as well as at certain points during the life of the contract).

1. At years 7 and 15 of the agreement, as well as the end of the initial term, the City has the opportunity to buy the solar system at fair market value should the City wish to do so at that time. The City would then own, maintain and operate the solar system (or contract out for operations & maintenance).
2. The City can extend the agreement for up to two optional 5-year terms at years 20 and 25, provided the City and SolEd are able to agree on pricing terms for the renewal period(s).
3. The City can require SolEd to remove the solar system and return facilities to their prior condition.

*Decommissioning Fund.* The contract requires SolEd to create a decommissioning fund in order to pay for the removal of the solar system and the restoration of the facility upon expiration or termination of the PPA. The decommissioning fund will be funded beginning part way through year 6 in equal installments which, in the aggregate, will equal the estimated cost to SolEd to remove the system and restore the facility.

*Operations and Maintenance.* The solar system will be fully owned, operated and maintained by SolEd, releasing the City from any operations and maintenance responsibilities. SolEd plans to enter into a subcontract with Sunetric for the provision of operation and maintenance services. Should the City elect to purchase the systems in the future, the City can contract out for operation and maintenance services or handle them in-house.

*No Alteration of Facility.* The City is responsible for maintaining the facilities where the systems are located. If the City wishes to make any alteration to a facility, the City must notify SolEd and provide SolEd with an opportunity to advise on how to make the alterations to avoid interruption to the system.

*Relocation of System.* If the City vacates or repurposes the facility where a system is located, the City may relocate the system to substitute premises. The parties will enter into a new contract for the new facility with a term equal to the remaining term of the existing contract.

#### Tree Work and Aesthetic Concerns

Some of the proposed solar arrays will require tree trimming and/or removal to optimize performance of the systems. In addition, on-going tree trimming and maintenance work is required at most of the sites. Some tree removal will be required at the City Hall and Terra Linda Community Center sites. Staff, including the city arborist, will seek to minimize tree impact and will trim rather than remove wherever possible. For details describing all required tree work, please see Attachment 4.

#### Roof Replacements

Staff is currently investigating the conditions of the City Hall, San Rafael Community Center, and Boro Community Center roofs. As stated previously in this report, staff believes it prudent to repair or replace roofs prior to the installation of solar systems. The City could defer roof replacement, but would then be required to include the cost for the removal and reinstallation of the solar system at the time of the roof replacement. Cost estimates for roof replacements/repairs are not yet available.

#### Energy Efficiency Audits and Upgrades

The City has had energy audits completed for City Hall (2005, 2014), Public Works building (2008), Boro Community Center (2008), San Rafael Community Center (2008), the C & A Street Parking Garages (2013) and Terra Linda Community Center (2014). Many of the energy efficiency improvements identified in the audits have been completed. Additional improvements can still be made without impacting the size of the solar systems as the change in usage is likely to be small.

#### Additional Community Benefits

*Electric Vehicle (EV) Charging Stations.* Staff will work with Sunetric to install EV Charging Stations, similar to the City's current charging stations.

*Educational opportunities.* Staff will work with Sunetric to install educational display screens at two of the sites with real-time information about the environmental benefits of the solar systems.

#### Community Input

As mentioned in the background section, this project has been presented to the City Council in public meetings (both regular hearings and a Study Session) multiple times and reported on at the quarterly Climate Change Action Plan community meetings. In addition, staff has included project information and updates in the City Manager's *Snapshot* e-newsletter. Staff also made project illustrative boards of the proposed Community Center sites and have displayed them in the respective facilities for the public to view and obtain information about tonight's City Council meeting.



Environmental and Design Review

Staff has determined that the project, which covers the installation of solar panels and related infrastructure on six City facilities, is categorically exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Sections 15329 (Cogeneration Projects at Existing Facilities; generation of less than 50 megawatts of energy) and 15311 (Accessory Structures).

State Law and the San Rafael Municipal Code allow solar panels to be installed without City discretionary review when placed on the roof of existing permitted buildings or paved parking areas, and outside of required front or exterior side yard setback or a required landscape area. The Planning Division has reviewed the details of the proposed structures and confirmed they are exempt.

**FISCAL IMPACT:**

Up to three roofs may require some improvements or replacement which will be funded from the City's facility maintenance fund. There are no upfront capital costs associated to the installation of equipment however some moderate tree trimming work will be required at a cost to the City.

For years 1-15, the PPA rate includes a 2.5% escalator and a 10% de-escalator for years 16-20. Based on the assumption that PG&E rates will increase by 3% each year, the estimated savings to the City for all proposed sites over the life of the 20-year agreements is approximately \$1.4 million.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt the attached Resolution approving the form of Power Purchase Agreement subject to final approval by City Attorney and directing the City Clerk to schedule a public hearing for the City Council meeting of August 18, 2014 to consider authorizing the City Manager to execute site specific Power Purchase Agreements with SolEd Benefit Corporation.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:** Adopt the resolution.

**ATTACHMENTS:**

1. Resolution
2. Power Purchase Agreement
3. Site Specific Conceptual Drawings and Information
4. Tree Report
5. Site Specific Pricing

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
APPROVING A POWER PURCHASE AGREEMENT FORM AND DIRECTING  
THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR THE CITY  
COUNCIL MEETING OF AUGUST 18, 2014 TO CONSIDER AUTHORIZING  
THE CITY MANAGER TO EXECUTE SITE SPECIFIC POWER PURCHASE  
AGREEMENTS WITH SOLED BENEFIT CORPORATION**

**WHEREAS**, the City Council of the City of San Rafael recognizes the importance of local action and on April 6, 2009, adopted a Climate Change Action Plan with the goal of a reducing greenhouse gases by 25% by 2020 and 80% by 2050; and

**WHEREAS**, on July 18, 2011, the City Council of the City of San Rafael adopted Resolution No. 13212, amending the San Rafael General Plan 2020 to add a new Sustainability Element; and

**WHEREAS**, on February 4, 2013, the City Council of the City of San Rafael adopted Resolution No. 13484, supporting the goals and ongoing implementation of the City's Climate Change Action Plan including a pledge to establish operational practices that maximize the use of clean and renewable energy; and

**WHEREAS**, the City of San Rafael adopted Resolution No. 13514 on March 18, 2013 approving an amended Memorandum of Understanding with the SEED Fund to be the Coordinating Agency for the three-county cooperative purchasing effort of solar energy for public facilities; and

**WHEREAS**, the City of San Rafael desires to demonstrate leadership in the community by generating its own renewable power; and

**WHEREAS**, the City of San Rafael has a strong existing commitment to developing solar energy and an understanding of the benefits of collaboration for their own and the region's clean energy goals; and

**WHEREAS**, the SEED Fund provided specific financial, staffing, legal and technical resources to the City for the collaborative procurement and Marin Clean Energy provided technical consulting services at a pro bono rate; and

**WHEREAS**, SolEd is a benefit corporation guided by the mission to provide the lowest lifetime cost of energy to public sector clients; and

**WHEREAS**, the projects identified in this effort are estimated to annually reduce 586 tons greenhouse gases and save an estimated \$1.4 million over 20 years in energy related costs; and

**NOW, THEREFORE, BE IT RESOLVED**, that the **CITY COUNCIL** hereby approves the form of Power Purchase Agreement with SolEd Benefit Corporation attached hereto and incorporated herein by reference, subject to final approval as to form by the City Attorney, for the following City facilities: City Hall, the Department of Public Works, Albert J. Boro Community

Center, San Rafael Community Center, Terra Linda Community Center, and the C Street Parking Garage.

**BE IT FURTHER RESOLVED**, that a public hearing shall be held before the City Council on August 18, 2014 in the City Council Chambers, 1400 Fifth Ave, San Rafael, California. Following the hearing, Council will consider adoption of a resolution authorizing the City Manager to execute site specific Power Purchase Agreements with SolEd Benefit Corporation.

**BE IT FURTHER RESOLVED**, the City Clerk is hereby directed to give notice of said hearing through publication in a newspaper of general circulation in the City of San Rafael not less than twenty days before the public hearing.

I, Esther C. Beirne, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 21<sup>st</sup> of July 2014, by the following vote, to wit:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:

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Esther C. Beirne, City Clerk

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is dated as of **[INSERT DATE]** (the “**Effective Date**”), and is witnessed, acknowledged, and executed by authorized representatives of SolEd Solar Holdings I, LLC, a California limited liability company (“**Seller**”), the managing member of which is SolEd Benefit Corp, a California Benefit Corporation, and the City of San Rafael, California, a municipality of the State of California (“**Purchaser**” and, together with Seller, each, a “**Party**” and together, the “**Parties**”), as evidenced by their signature on this cover page.

### RECITALS

- A. Purchaser wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Purchaser has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation coordinated by the City of San Rafael;
- C. Seller is in the business of designing, constructing, owning, financing and operating solar photovoltaic electric generating systems for the purpose of selling power generated by the systems to its Purchasers at the lowest practical lifetime cost of clean energy;
- D. Purchaser has selected Seller and its engineering, procurement and construction firm to design, construct, own, finance and operate a solar photovoltaic generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- E. Seller intends to construct, own, and operate renewable energy-powered generating facilities and desires to sell electricity produced by such generating facilities together with Environmental Attributes and Environmental Incentives to Purchaser pursuant to the terms, conditions, covenants and provisions set forth herein; and
- F. Purchaser desires to purchase electricity generated by Seller’s generating facility, together with all Environmental Attributes and Environmental Incentives pursuant to the terms and conditions set forth herein;

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

<b>Purchaser:</b>		<b>Seller:</b>	
<b>Name and Address</b>	City of San Rafael [_____] San Rafael, CA 94901 Attention: [_____]	<b>Name and Address</b>	SolEd Solar Holdings I, LLC, c/o SolEd Benefit Corp, Managing Member P.O. Box 151731 San Rafael, CA 94915-1731 Attention: David Kunhardt, CEO
<b>Phone</b>	(415) [__-__]	<b>Phone</b>	(415) 609-7893
<b>Fax</b>	None	<b>Fax</b>	None
<b>E-mail</b>	[_____]	<b>E-mail</b>	David@Sol-Ed.com
<b>Premises Ownership</b>	Purchaser [x] owns [ ] leases the Premises, also known as [_____]	<b>Additional Seller Information</b>	Seller is a Benefit corporation, incorporated in California in 2013, serving the mission of delivering the lowest lifetime cost of clean energy to public clients.

This Agreement sets forth the terms and conditions of the service contract for purchase and sale of (a) solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and (b) car charging stations described in **Exhibit 2** (the “**Car Charging Stations**”) to be installed at Purchaser’s facility described in **Exhibit 2, Attachment A** (the “**Facility**”). The terms and conditions of this Agreement are provided and intended for use by public agencies affiliated or not affiliated with Purchaser, but with similar procurement and contracting regulations as those of Purchaser.

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

<u><b>Exhibit 1</b></u>	<b>Basic Terms and Conditions</b>
<u><b>Exhibit 2</b></u>	<b>System Description</b>
<u><b>Exhibit 3</b></u>	<b>Credit Information</b>
<u><b>Exhibit 4</b></u>	<b>General Terms and Conditions</b>
<u><b>Exhibit 5</b></u>	<b>Form of Memorandum of License</b>
<u><b>Exhibit 6-1</b></u>	<b>Engineering and Construction Requirements</b>
<u><b>Exhibit 6-2</b></u>	<b>Equipment Warranties</b>
<u><b>Exhibit 7</b></u>	<b>Form of Attestation</b>
<u><b>Exhibit 8</b></u>	<b>Milestone Schedule</b>
<u><b>Exhibit 9</b></u>	<b>Insurance Requirements</b>
<u><b>Exhibit 10</b></u>	<b>Seller and Purchaser Agreed Responsibilities</b>

**Purchaser: City of San Rafael**

**Seller: SolEd Solar Holdings I, LLC**

**By: SolEd Benefit Corp, Managing Member**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**

**Basic Terms and Conditions – Site: \_\_\_\_\_**

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date, as defined in **Exhibit 4, Section 3(a)**.
2. **Additional Terms:** Up to two (2) optional Additional Terms of five (5) years each.
3. **Environment Attributes:** Accrue to Purchaser.
4. **Environmental Incentives:** If applicable, to be directly paid over, or credited to, Purchaser as soon as received.
5. **Contract Price:**

Contract Year	\$/kWh
1	\$0.0000
2	\$0.0000
3	\$0.0000
4	\$0.0000
5	\$0.0000
6	\$0.0000
7	\$0.0000
8	\$0.0000
9	\$0.0000
10	\$0.0000
11	\$0.0000
12	\$0.0000
13	\$0.0000
14	\$0.0000
15	\$0.0000
16	\$0.0000
17	\$0.0000
18	\$0.0000
19	\$0.0000
20	\$0.0000

6. **Condition Satisfaction Date:** As set forth in **Exhibit 4, Sections 6(a) and 6(b)**.
7. **Anticipated Commercial Operation Date:** [\_\_\_\_], 201[\_\_\_\_].
8. **Purchaser Options to Purchase System.** ☐ None ☒ or as set forth in **Exhibit 4, Section 16(b)**.

## 9. System Installation:

Includes:	<p>[X] Design, engineering, permitting, interconnection application and completion, installation, prevailing wage construction, monitoring and communication, rebate and permit application and paperwork processing, and final commissioning of the completed System, complete and accurate As-Built design documents, copies of executed module, inverter, and system workmanship warranties, and Operations and Maintenance services Agreement, as described in <b><u>Exhibit 6-1</u></b> (Engineering and Construction Requirements), and additional items for which Seller has agreed to be responsible as set forth on <b><u>Exhibit 10</u></b>.</p> <p>[X] 10-year Limited Warranty on workmanship and inverters, 25-year Warranty on PV modules.</p> <p>[X] List of Approved Subcontractors</p> <p>[ ] Any like substantive equipment, in the sole discretion of Seller.</p> <p>[ ] State or Utility Rebate, if any.</p> <p>[X] Proof of lien-free construction will be provided.</p> <p>[X] Interactive Display for Generating Facilities. If this item is checked, the provisions of <b><u>Exhibit 4, Section 12(b)</u></b> shall apply.</p>
Excludes:	<p>Payment bonds, performance bond(s), tree removal and tree trimming, groundwork, upgrades or repair to the Facility or utility electrical infrastructure for which Purchaser has agreed to be responsible as set forth on <b><u>Exhibit 10</u></b>. To the extent of any conflict between this paragraph and <b><u>Exhibit 10</u></b>, the provisions of <b><u>Exhibit 10</u></b> shall govern.</p>

**Exhibit 2**  
**System Description**

1. **System Location:** San Rafael City Hall
2. **System Size (DC kW):** [\_\_\_\_\_]
3. **Expected Contract Quantity (kWh):**

Initial Year	Expected Quantity (kWh)
January	0000
February	0000
March	0000
April	0000
May	0000
June	0000
July	0000
August	0000
September	0000
October	0000
November	0000
December	0000

Contract Year	Expected Quantity (kWh)
1	0000
2	0000
3	0000
4	0000
5	0000
6	0000
7	0000
8	0000
9	0000
10	0000
11	0000
12	0000
13	0000
14	0000
15	0000
16	0000
17	0000
18	0000
19	0000
20	0000

4. **Expected Structure:** ☐ Ground Mount ☒ Roof Mount ☒ Parking Structures ☒ Other: Installation of Car Charging Stations



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

<u>Manufacturer/Model</u>	<u>Quantity</u>
{{...}}	{{...}}

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

<u>Manufacturer/Model</u>	<u>Quantity</u>
{{...}}	{{...}}

7. **Expected Monitoring Provider:**

<u>Manufacturer/Model</u>	<u>Quantity</u>
{{...}}	{{...}}

8. **Expected Car Charging Station Provider:**

<u>Manufacturer/Model</u>	<u>Quantity</u>
{{...}}	{{...}}

9. **Facility and System Layout:** See **Exhibit 2, Attachment A**

10. **Utility:** Pacific Gas & Electric Co. and Marin Clean Energy, as applicable

11. **Current Utility Tariff:** **XX** **Proposed Utility Tariff:** **XX**

12. **Warranties:** (i) Warranty for the performance of the System set forth in Section 7(m); (ii) Warranty for meter accuracy set forth in Exhibit 4, Section 12(a); and (iii) Equipment warranties set forth in Exhibit 6-2, executed copies of which will be submitted at construction completion with As-Built documentation.

**Exhibit 2**  
**Attachment A:**  
Facility and System Layout

Aerial Photograph of the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	[describe meter location]
Access Point(s)	[written description of access point(s) needed to install and service System, also indicate below]

[Images of solar site]

**Exhibit 3**  
**Credit Information**

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

<b>PURCHASER INFORMATION</b>							
<b>Name:</b> City of San Rafael						<b>Tax ID:</b>	
<b>Previous &amp; Other Names:</b> N/A				<b>Website:</b> www.Cityofsanrafael.org			
<b>Office Address:</b> c/o City Hall, 1400 5 <sup>th</sup> Avenue							
<b>City, State, Zip</b> San Rafael, CA 94901							
<b>Phone Number:</b> (415) ____ - ____				<b>Fax Number:</b> (____) ____ - ____			
<b>Entity Type</b>	<b>S-Corp</b>	<b>C-Corp</b>	<b>Partnership</b>	<b>Sole Prop</b>	<b>LLC</b>	<b>LLP</b>	<b>Other City</b>
<b>Check One:</b>							
<b>Property Address for Solar Installation:</b> Over Parking Areas at 1400 5 <sup>th</sup> Ave., San Rafael				<b>State:</b> CA		<b>Zip Code:</b> 94901	
						<b>Property Owned by Applicant</b> <input type="radio"/> YES <input type="radio"/> NO	
<b>Property Type</b> Public City Hall		<b>Insurance Agent Name</b>		<b>Agents Phone:</b> (____) ____ - ____		<b>Name of Property Owner if Not Applicant</b> N/A	
<b>Information Requested: Please submit the information required below via electronic format to _____@_____.</b>							
<u>Corporate Records</u>  <input type="checkbox"/> Not Applicable							
<u>Financial Statements</u>  <input type="checkbox"/> Public Agency Records. See audit reports here: <a href="http://docs.cityofsanrafael.org/Finance/reporting/san_rafael_cafr_2013_Final.pdf">http://docs.cityofsanrafael.org/Finance/reporting/san_rafael_cafr_2013_Final.pdf</a>							
<u>Real Estate Documents</u>  <input type="checkbox"/> Not Applicable							
Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.							

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply.

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. Seller is an equal opportunity service provider.

**Signature:**

**Title:**

**Date:**

**Exhibit 4**  
**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 (the “**Energy**”) for each Contract Year during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”), up to 110% of Expected Contract Quantity for each Contract Year set forth on **Exhibit 2**. Purchaser shall have the option, but not the obligation, to purchase the Energy in excess of 110% of the Expected Contract Quantity. Seller will first offer any Energy beyond the 110% cap to Purchaser and, only if Purchaser does not exercise its option to purchase all or a portion of such excess Energy, Seller shall be permitted to resell the excess Energy, provided such sale is in accordance with all applicable laws. Energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the Energy 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 Purchaser’s electric requirements at the Facility exceed the Energy generated by the System. Any delivery of Energy prior to the Commercial Operation Date shall be treated as limited amounts of test energy only and shall not indicate that the System has been put in commercial operation, and Purchaser shall not be under obligation to pay for such test energy. Seller shall deliver to Purchaser the Energy at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto, by any person. For the avoidance of doubt, Seller’s obligation to deliver Energy unencumbered shall not in any way affect Seller’s ability to grant a security interest in or otherwise encumber the System in accordance with the terms of this Agreement. “**Contract Year**” means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.
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. Following Purchaser’s inspections pursuant to Section 7(c)(iii) below, 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. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) business days of the date of receipt of such notice. Upon submittal of the notice, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor, including signed Building Inspection card, and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth on **Exhibit 2**. The notice shall also include commissioning test results. This Agreement is effective as of the Effective Date and, subject to the provisions of **Section 18** below, Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing under this Agreement shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, Purchaser may give Seller 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 such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than three hundred sixty five (365) days and not less than ninety (90) days before the last day of the Initial Term or the then current Additional Term, as applicable. If Purchaser delivers such notice, the Parties shall promptly meet and confer to discuss and agree upon the (i) Expected Contract Quantity, (ii) Contract Price for

Contract Years 2-5 of the Additional Term and (iii) Termination Payment applicable for each Contract Year of such Additional Term. The Parties agree that the Contract Price applicable during the first Contract Year of any Additional Term shall be the same as the Contract Price in effect during the last Contract Year of the Initial Term or prior Additional Term, as applicable. If Seller and Purchaser successfully agree on such terms within sixty (60) days of the date such notice is delivered by Purchaser, Purchaser and Seller shall enter into an amendment to this Agreement which shall state the mutually agreed upon Expected Output Quantity, Contract Price and Termination Payment applicable for each Contract Year of the Additional Term and confirm that all other terms of this Agreement shall continue unchanged in full force and effect. If the Parties are unable to agree on such terms during such sixty (60) day period despite the Parties good faith efforts to reach agreement, Seller shall be deemed to have rejected the offer for an Additional Term. The Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term and this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

**c. Termination.**

- i. Prior to Commencement of Construction. Purchaser may terminate this Agreement at any time upon written notice prior to Seller's delivery of full notice to proceed to contractor by Seller. Upon such termination, Purchaser shall reimburse Seller for all reasonable documented out-of-pocket costs incurred by Seller in connection with its diligence, investigations, and the design, engineering, permitting and procurement of materials for the System ("**Design Cancellation Payment**") as evidenced by the submission of engineering and design drawings in accordance with the Milestone schedule on **Exhibit 8** and other reasonable supporting documentation; provided, if such termination occurs (A) prior to the date that System engineering and design drawings are 50% complete, the Design Cancellation Payment shall not exceed Five Thousand and 00/100 Dollars (\$5,000), (B) prior to the date that System engineering and design drawings are 90% complete, the Design Cancellation Payment shall not exceed Nine Thousand and 00/100 Dollars (\$9,000), and (C) prior to the date that System engineering and design drawings are 100% complete, the Design Cancellation Payment shall not exceed Fifteen Thousand and 00/100 Dollars (\$15,000). Purchaser's payment to Seller of the Design Cancellation Payment shall be Seller's sole and exclusive remedy for such termination.
- ii. Following Commencement of Construction. Purchaser may terminate this Agreement at any time after Seller's delivery of full notice to proceed to the contractor upon thirty (30) days prior written notice to Seller. In the event of termination by Purchaser after the delivery of full notice to proceed by Seller, Purchaser shall pay to Seller the applicable Termination Payment set forth in **Exhibit 4, Attachment A**, and Seller shall, at its expense, cause the applicable System to be disconnected and removed from the Facility and remediate and restore the Facility in accordance with Seller's obligations in **Section 11**. Notwithstanding the foregoing, Purchase shall not be obligated to pay the Termination Payment in the event Purchaser terminates this Agreement due to (i) the failure of Purchaser's Conditions Precedent pursuant to **Section 6(c)**; (ii) Seller's Default pursuant to **Section 13(b)**; or (iii) a Force Majeure event pursuant to **Section 18(d)**.

**4. Billing and Payment.**

- a. Monthly Charges. Purchaser shall pay Seller monthly for the Energy delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "**Contract Price**") for the current Contract Year. The first Contract Year shall start on the Commercial Operation Date, and each succeeding Contract Year shall begin on the succeeding anniversary of the Commercial Operation Date. 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 Energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar (\$25) handling charge will be added to each invoice.
- c. Taxes. Seller shall either pay or reimburse Purchaser 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, Seller will not be required to reimburse Purchaser or otherwise pay for (i) any Taxes during periods when Seller fails to deliver electric energy to Purchaser as a result of Purchaser's gross negligence, willful misconduct or breach of this Agreement by Purchaser or (ii) any Taxes which are imposed by any applicable law or regulation made effective after the Effective Date. Notwithstanding the foregoing, Seller shall be exempt from any tax, fee, levee or other charge now or hereafter assessed by Purchaser related to or applicable to energy use and/or sale. For purposes of this Section 4(c), "**Taxes**" means any federal, state and local ad valorem, income, property, possessory interest, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges.

- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. If payment is not received within the thirty (30) day period, the Party to whom payment is due (a "payee") shall send notice of past-due amount. After the payee sends such notice, any undisputed portion of the invoice amount not paid within the following thirty (30) day period shall accrue interest at the annual rate of the prime rate plus two percent (2%) (but not to exceed the maximum rate permitted by law).

## 5. **Tax Credits, Environmental Attributes and Environmental Incentives.**

- a. **Ownership of Tax Credits, Environmental Attributes and Environmental Incentives.** Seller, as owner of the energy generating equipment, is the owner of all Tax Credits and other tax attributes of ownership, and Purchaser shall cooperate with Seller in perfecting such ownership. Seller acknowledges that Purchaser has made no statements, representations or warranties regarding the eligibility of the System for the Tax Credits, and Seller is not relying on any statement, representation or warranty by Purchaser or any third party with respect to the Tax Credits in entering into this Agreement. As specified on Exhibit 1, Purchaser is the owner of all Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties). Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives (as agreed by the Parties) to Purchaser. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller.
- b. **Transfer of Environmental Attributes.** Throughout the Term, Seller shall transfer to Purchaser, and Purchaser shall receive from Seller, all rights and interest in and to the Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties), whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Energy purchased by Purchaser from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) available to Purchaser immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of such Environmental Attributes or Environmental Incentives. Seller agrees that the Contract Price, as applicable, is the full compensation for all Environmental Attributes and any applicable Environmental Incentives (except as otherwise agreed by the Parties).
- c. **No Transfer to Third Parties.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes or Environmental Incentives to any person other than Purchaser.
- d. **Reporting.** Seller shall take such actions as are reasonably necessary to ensure that the Environmental Attributes are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Purchaser, including registration of the System in WREGIS. During the Term, Seller shall not report to any person that the Environmental Attributes granted hereunder to Purchaser belong to anyone other than Purchaser, and Purchaser may report under any program that such attributes purchased hereunder belong to it.
- e. **Attestation.** On or shortly after the final day of each Contract Year, Seller shall document the transfer of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) to Purchaser under this Agreement by delivering to Purchaser an attestation of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 7, which Form of Attestation may be updated or changed by Purchaser with Seller's prior written approval, not to be unreasonably withheld, as necessary to ensure that Purchaser receives full and complete title to, and the ability to record with WREGIS or any successor EA Agency as its own, all of the Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) purchased hereunder.

f. **Documentation.** At Purchaser's option, the Parties, each at their own expense, shall execute all such documents and instruments in forms reasonably approved by the Parties in order to affect the transfer of the Environmental Attributes specified in this Agreement and any applicable Environmental Incentives (as agreed by the Parties) to Purchaser or its designees, as Purchaser may reasonably request. Upon notification by WREGIS or any successor EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to WREGIS or any successor EA Agency to effectuate any transfers. From and after Seller's transfer of Environmental Attributes or any applicable Environmental Incentives (as agreed by the Parties) to Purchaser, Seller will have no obligation, risk, liability or benefit to, from or arising out of such Environmental Attributes or as a consequence of Purchaser's determination to keep, sell, or retire any such Environmental Attributes.

g. **Defined Terms.** As used in this Section 5 the following definitions shall apply:

"**EA Agency**" means any Governmental Authority that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, for example, the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.

"**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 (a) 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; (b) 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 (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, Renewable Energy Credits or certificates, emissions reduction credits, emissions allowances, Green Tag Reporting Rights, tradeable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity 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 (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

## 6. **Conditions to Obligations.**

a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in

Section 6(c) below, are conditioned on the completion of the following conditions (collectively “**Seller’s Conditions Precedent**”) to Seller’s reasonable satisfaction on or before the date specified below (each a “**Condition Satisfaction Date**”):

On or before the date that is sixty (60) days following the Effective Date:

- i. Completion of physical inspections of the Facility and the property upon which the Facility is located (the “**Premises**”) including, if applicable, geotechnical work, title review, inspections of electrical systems and infrastructure, and other real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Receipt of an executed financing commitment for the construction of the System from a Financing Party (“**Financing Term Sheet**”);
- iii. Approval of (A) this Agreement and (B) the Construction Agreement for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

On or before the date that is one hundred eighty (180) days following the Effective Date:

- iv. Receipt of all necessary zoning, land use and building permits necessary to construct and operate the System; including without limitation, receipt of Purchaser’s notice to proceed under CEQA (as defined below) pursuant to Section 6(b)(iv) below and a fully executed CEQA Cost Sharing Agreement (as defined below) if applicable;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system; and
- vi. Prior to Seller commencing construction and installation of the System, Seller shall have received (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, and (B) written confirmation in recordable form acceptable to Seller and Seller’s Financing Parties from any person or entity holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller’s rights under this Agreement for as long Seller is not in default hereunder.

The Seller’s Conditions Precedent set forth in this Section 6(a) are solely for the benefit of Seller and may only be waived or deemed satisfied by Seller in Seller’s sole but reasonable discretion.

- b. **Conditions to Purchaser’s Obligations.** Purchaser’s obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in Section 6(c) below, are conditioned on the completion of the following conditions (collectively, the “**Purchaser’s Conditions Precedent**”) to Purchaser’s reasonable satisfaction on or before the date specified below (each, a “**Condition Satisfaction Date**”):

Purchaser’s obligations under Section 4(a) of this Agreement are conditioned upon the following:

- i. The occurrence of the Commercial Operation Date on or before the Anticipated Commercial Operation Date set forth on Exhibit 1;

Purchaser’s obligations under this Agreement other than under Section 4(a) of this Agreement are conditioned upon the following occurring on or before the date that is one hundred eighty (180) days following the Effective Date:

- ii. Purchaser shall have received a copy of the Financing Term Sheet;
- iii. Purchaser shall have received proof of insurance for all insurance required to be maintained by Seller under this Agreement;



- iv. Purchaser shall be in compliance with the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000 *et seq.* to Purchaser’s reasonable satisfaction. Seller shall not have any right to install the System until Purchaser has fully complied with CEQA, issued a statement to Seller attesting to the fact that Purchaser has fully complied with CEQA as it relates to the System, and issued a notice to proceed to Seller. Purchaser expects to satisfy the CEQA requirements with a Notice of Exemption for each project. If Purchaser, in its discretion, determines that a mitigated negative declaration (“MND”) or environmental impact report (“EIR”) is required to comply with CEQA, then Purchaser shall, within thirty (30) days of such determination, provide Seller with a written statement detailing the reasons that Purchaser believes that MND or EIR is required to comply with CEQA, the estimated cost to comply with CEQA for the System, and a statement that it will or will not pay for the estimated cost to comply with CEQA for the applicable System. If Purchaser declines to pay for all of the estimated costs to comply with CEQA, Purchaser may negotiate with Seller to share such costs and any agreement reached by the Parties to share such cost shall be in writing, duly executed by the Parties (a “CEQA Cost Sharing Agreement”); and
- v. Purchaser’s reasonable approval of the Construction Agreement; provided, Purchaser may only withhold its approval of the Construction Agreement if the terms and conditions of the Construction Agreement directly conflict with the terms and conditions of this Agreement.

The conditions precedent set forth in this Section 6(b) are solely for the benefit of Purchaser and may only be waived or deemed satisfied by Purchaser in Purchaser’s sole but reasonable discretion.

- c. **Failure of Conditions.** If any of the conditions set forth in Section 6(a) or Section 6(b) are not waived or deemed satisfied by the Party benefited by such condition on or before the applicable Conditions Satisfaction Date, the Parties will meet and confer in good faith to negotiate an extension of the applicable Conditions Satisfaction Date; with each Party agreeing that it will not unreasonably withhold its approval of a proposed extension requested by the other Party. If the Parties are unable to agree upon the extension of any Conditions Satisfaction Date within twenty (20) days following the expiration of the applicable Conditions Satisfaction Date despite their good faith efforts, then the Party benefited by the condition that has not been satisfied or waived by the applicable Conditions Satisfaction Date 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 other than as set forth below. For the avoidance of doubt, if Purchaser terminates the Agreement pursuant to the terms of this Section 6(c), no Termination Payment or Design Cancellation Payment shall be payable by Purchaser hereunder. Each Party hereby covenants and agrees to use commercially reasonable and diligent efforts to cause the conditions precedent to such Party’s obligations to be satisfied prior to applicable Conditions Satisfaction Date specified.

## **7. Seller’s Rights and Obligations.**

- a. **Generally.** Seller shall develop, construct, finance, own, maintain and operate the System in accordance with this Agreement, all requirements of applicable law, all permits and governmental approvals, the Current Utility Tariff and/or Proposed Utility Tariff, as applicable, and Prudent Industry Practice. “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering, construction and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.
- b. **Permits and Approvals.** Seller, with Purchaser’s reasonable cooperation, shall use commercially reasonable efforts to obtain, maintain, comply with and, as necessary, renew and modify from time to time, at its sole cost and expense:
  - i. any zoning, land use and building permits required to construct, install and operate the System; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility’s electric distribution system.

- c. **Engineering and Construction Requirements.** All elements of design, engineering and construction of the System are Seller's responsibility. Seller shall design, engineer and construct the System in accordance with the engineering and construction requirements set forth on **Exhibit 6-1** hereto (the "**Engineering and Construction Requirements**") and timelines for milestones set forth on **Exhibit 8** (the "**Milestones**").
- i. **Design Acceptance.** By the applicable Milestone date set forth on **Exhibit 8**, Seller shall provide Purchaser with a complete design and engineering plan, including blueprints, plans, engineering drawings, specifications and structural reports for the System (the "**Design Plans**") for Purchaser's review. Within thirty (30) days of receiving such plans, Purchaser shall provide Seller with (i) a letter accepting Seller's proposed Design Plans for the System, or (ii) a report explaining why the System cannot meet the structural support and weight standards that Purchaser provided to Seller; provided that if Seller does not receive a letter or a report within such thirty (30) day period, Purchaser shall be deemed to have accepted Seller's proposed Design Plans. If Purchaser delivers to Seller the report described in clause (ii) above, Seller shall revise the Design Plans so that the System meets the structural support and weight standards of the Facility and resubmit the Design Plans to Purchaser for approval within thirty (30) days of receipt of such report. Such resubmission shall restart the Design Plan acceptance process pursuant to this **Section 7(c)(i)**; provided, Purchaser shall provide Seller with a letter accepting Seller's revised Design Plans for the System, or a report explaining why the System cannot meet the structural support and weight standards provided by Purchaser within fifteen (15) days of Seller's resubmittal. Notwithstanding the foregoing, Seller shall not be permitted to commence construction of the System until it has received a notice to proceed from Purchaser in accordance with **Section 6(b)(iii)**.
- ii. **Milestones.** Seller shall diligently pursue completion of all Milestones by the required dates set forth on **Exhibit 8**. The Parties agree that time is of the essence in connection with the completion of the System, and that Milestones for the development, financing and construction of the System must be achieved in a timely fashion. Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify Purchaser in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may have on any other Milestone, and the measures to be taken to mitigate such impact.
- iii. **Mechanical Completion and Substantial Completion.** Seller shall notify Purchaser when full notice to proceed is issued to the contractor. Seller shall provide Purchaser with a copy of any certificate of mechanical completion or certificate of substantial completion from the contractor promptly following receipt thereof. Upon receipt of such certificate, Purchaser shall schedule an inspection of the System for a date, mutually agreeable to Seller and Purchaser, which is within ten (10) business days following Purchaser's receipt of the certificate of substantial completion or mechanical completion for the System. Following Purchaser's inspection of the System, Purchaser may, within five (5) business days of the inspection, prepare and provide to Seller a list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement or the Construction Agreement. If Seller disputes any items on Purchaser's list, the Parties shall promptly meet and confer in a good faith effort to resolve any such disputes. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by Purchaser, and shall provide a written response to Purchaser setting forth the actions taken in response to such items or explaining why no action is necessary. If requested by Purchaser, Seller shall schedule and arrange a follow-up inspection for Purchaser and Seller after all items on Purchaser's list are resolved. For the avoidance of doubt, such items shall be corrected without cost to Purchaser. All items identified by Purchaser, except those items specifically excepted by mutual agreement between Purchaser and Seller, shall be completed before Seller accepts the certificate of mechanical completion or certificate of substantial completion, as applicable.
- iv. **Reporting.** Seller shall provide bi-weekly (i.e. every other week) reports to Purchaser detailing the status of the design, engineering and construction of the System and Seller's progress in achieving the Milestones. Following the completion of the construction of the System, Seller shall deliver Purchaser a copy of As-Built drawings and copies of all executed warranties relating to the System. Seller will create, maintain and provide to Purchaser minutes of meetings between the representatives of Seller and Purchaser during the design, engineering and construction phase of the System. "**As-Built**" shall mean final record drawings based on redlines from the field reflecting the System as constructed.

- v. **Force Majeure Event.** In the event that a Force Majeure event causes any delay in the achievement of a Milestone by the date set forth in **Exhibit 8**, such Milestone's deadline shall be extended, together with any Force Majeure event extensions for other Milestones, for a period not to exceed twelve (12) months in the aggregate. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure events for any or all of the Milestones exceed twelve (12) months. In the event the combined extensions for Force Majeure events for any or all Milestones exceeds twelve (12) months (but not prior to such time), Purchaser shall be permitted to exercise its rights pursuant to **Section 18(d)**.
- vi. **Waiver of Right.** Purchaser may, at its discretion, grant extensions for Milestones or waivers for Seller's failure to meet any of the Milestones, but in no way shall any such extension or waiver constitute a waiver of any future failures by Seller to meet other Milestones. For the avoidance of doubt, Purchaser's consent to extensions of the Milestones pursuant to **Section 7(c)(v)** shall not be required.
- d. **Standard System Repair and Maintenance; Repair of Facility.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to (including replacement of), and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Purchaser, its employees, agents, contractors (other than Seller or Seller's contractors and subcontractors) or consultants (together with Purchaser, collectively, the "**Purchaser Parties**" and individually, a "**Purchaser Party**"). If the System is damaged or destroyed other than by the negligence or willful misconduct of any Purchaser Party, Seller shall promptly repair and restore the System to its pre-existing condition, subject to the provisions of this **Section 7(d)** and **Section 15(a)** below. The cost to repair, replace or restore any portion of the System due to the negligence or willful misconduct or breach of this Agreement by any Purchaser Party shall be paid by Purchaser. Seller and Purchaser shall use commercially reasonable efforts to coordinate scheduling of regular maintenance to minimize impacts to Facility operations and maximize System output of Energy during the months of May through October. 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 Purchaser is responsible, Seller shall cause its contractor prepare a written estimate of the cost to make such repairs or replacements, calculated using standard market rates, and such repairs and replacements shall be made by Seller's contractor at Purchaser's sole cost and expense. If, based on the estimated cost of such replacement or repairs, Purchaser does not wish to have the System repaired or replaced, Purchaser may elect to terminate this Agreement pursuant to **Section 3(c)**. Seller and any Financing Party may nullify such termination notice by written notice to Purchaser delivered on or before the expiration of such thirty (30) day period stating that Seller or the Financing Party has elected to pay for the cost of such replacement or repairs in excess of any insurance proceeds available from any insurance policy issued to Purchaser (which for purposes of clarification does not include Purchaser's self-insurance pool) by a third party insurance carrier (such carrier, a "**Third Party Insurance Carrier**" and such policy, a "**Third Party Insurance Policy**") which covers such loss or damage. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs. Seller shall promptly notify Purchaser 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. Purchaser shall cooperate with Seller in good faith to cause proceeds from any Third Party Insurance Policy to be available to cover the cost of repairs to the System for which Purchaser is responsible to the extent such loss or damage is covered under the terms and conditions of such Third Party Insurance Policy.
- e. **Breakdown Notice.** Seller shall notify Purchaser as soon as practicable and in any event 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.
- f. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall, for a total of forty-eight (48) daylight hours per calendar year during the Term, 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 Purchaser. Purchaser shall not be obligated to pay for lost energy production due to (a) Seller system maintenance or repair pursuant to **Section 7(d)**, unless such maintenance and repair is necessitated due

to damage caused by the negligence, willful misconduct or breach of this Agreement by any Purchaser Party or (b) a Purchaser Scheduled Outage pursuant to Section 8(e) unless and except to the extent a Purchaser Scheduled Outage exceeds a total of forty-eight (48) daylight hours per calendar year (other than due to a Force Majeure event); provided, that Seller must notify Purchaser of any scheduled suspension at least forty-eight (48) hours in advance of the commencement of such scheduled suspension. In the event that suspensions exceed a total of forty-eight (48) daylight hours per calendar year for a reason other than a Force Majeure event or Purchaser's breach of this Agreement, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess suspensions and shall pay Purchaser an amount equal to the sum of the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System during such excess suspensions and the payment of such amount by Seller to Purchaser shall be Purchaser's sole and exclusive remedy for such interruption.

- g. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors and shall require all contracts with all contractors and subcontractors to contain a provision requiring compliance by such contractor or subcontractor with this Agreement and naming Purchaser as a third party beneficiary (though Purchaser assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to contractors or subcontractors). A list of pre-approved contractors and subcontractors to be used for construction of the System shall be scheduled on **Exhibit 4, Attachment B.** All contractors and subcontractors to be used for the construction of the System, other than those that may be scheduled on **Exhibit 4, Attachment B.** shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.
- h. **Liens and Payment of Contractors and Suppliers.** Seller shall not directly or indirectly cause, create, include, 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 Facility, the Premises or any interest therein; provided, Seller shall be entitled to finance the System and assign its interest under this Agreement and the License granted hereunder pursuant to Section 19 below. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall promptly notify Purchaser in writing of the existence of any lien and promptly cause the same (other than Seller's liens for non-payment by Purchaser) to be discharged and released of record without cost to Purchaser. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any such liens filed against the Facility or the Premises; 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.
- i. **OSHA Compliance.** Seller shall ensure that all Occupational Safety and Health Act ("OSHA") requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- j. **Security.** Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the System against known risks and risks that should have been known by Seller. Seller will not conduct activities on, in or about the System that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility or the Premises.
- k. **Records.** Seller shall maintain any and all documents and records which demonstrate performance under this Agreement, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Purchaser for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon five (5) days prior written request by a designated representative of Purchaser. Seller shall not charge Purchaser for Purchaser's inspection of records; provided, Purchaser shall pay any copying or other reproduction costs and for the cost of any audit made at Purchaser's election. Seller shall provide copies of such documents to Purchaser for inspection at Seller's office or

at such place as Seller maintains such records at a time that is mutually acceptable to Purchaser and Seller. Where Purchaser has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Seller's business, Purchaser may, by written request by any of the above-named officers, require that custody of Seller's documents be given to Purchaser. Seller shall comply with Purchaser's reasonable written request.

- l. Contractor's Warranties; Cooperation.** Subject to the Financing Party's rights pursuant to Section 19 below, if Seller fails to replace or repair the System as required pursuant to Section 7(d) above, and such failure continues for more than thirty (30) days following Purchaser's written notice to Seller, Purchaser shall have the right, at Seller's cost and expense, to enforce the terms and conditions of any warranty issued to Seller in connection with the System and Seller shall take all reasonable action necessary to enable Purchaser to enforce the terms and conditions of such warranties. Seller shall cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract between Seller and its general contractor Sunetric and supplier Danlin Solar. Seller shall use commercially reasonable efforts to cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract with any other subcontractor or material supplier. Seller shall, and shall cause its contractors and subcontractors to, work with Purchaser's existing roofing contractors and manufacturers to ensure original roof warranties, if applicable, stay in effect while the System is installed and operating. The Parties acknowledge that cooperation by Purchaser's existing roofing contractors will be required to maintain original roof warranties. Should existing roofing contractors be unwilling to maintain original roof warranties, Seller will inform Purchaser of such fact in writing, and Purchaser will advise Seller on how to proceed.
- m. Energy Delivery.** Beginning on the Commercial Operation Date, the System shall produce not less than ninety percent (90%) of the applicable Expected Contract Quantity for any given Contract Year as adjusted for Abnormal Weather Conditions, measured on a rolling, three (3) year cumulative basis, unless, and then only to the extent that, the failure to satisfy the Expected Contract Quantity for a given Contract Year is due to (a) Facility failure, damage or downtime attributable to third parties (other than Seller's contractors and subcontractors); (b) general utility outages or any failure of an applicable electric grid; (c) a Force Majeure Event; or (d) Purchaser's failure to satisfy its obligations hereunder. "**Abnormal Weather Conditions**" shall mean weather conditions which were abnormal for the period of time and could not have been reasonably anticipated, as substantiated with documentation including U. S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station, which such ten-year average will be the basis for determining the number of adverse weather days that could have been reasonably and normally anticipated by Seller. Subject to the terms and conditions of this Agreement, beginning within sixty (60) days of the third anniversary of the Commercial Operation Date and for every Contract Year thereafter, if the delivered Energy of such System for the three (3) year period prior to such anniversary does not equal or exceed ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, Seller will credit Purchaser on its net invoice, an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for the current Utility rate schedule (after taking into consideration adjustments for time of use) during such three (3) year period minus the Contract Price hereunder, multiplied by (ii) the difference between the Energy for such three (3) year period and ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, less any credit previously given covering the same period. This performance guarantee shall remain in place for twenty (20) years from the Commercial Operation Date.
- i. Limitations.** Pursuant to this Section 7(m), the Parties recognize and agree that (a) payment or credit of amounts by Seller to Purchaser is an appropriate remedy, (b) that the amount credited or paid in any year shall not exceed an amount equal to Twenty Five Dollars (\$25.00) per DC kW of System size (the "**Production Guaranty Cap**"), (c) any such payment or credit does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs of Purchaser under the terms of this Agreement, and (d) that such amounts shall be Purchaser's sole and exclusive remedy for any performance guarantee claim arising out of this Agreement. At the commencement of the first anniversary of the Commercial Operation Date and at the commencement of each Contract Year thereafter, the Production Guaranty Cap shall be increased by an amount equal to three percent (3%) of the Production Guaranty Cap in effect for the prior Contract Year.

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

- a. **License to the Premises; Facility Access Rights.** Subject to Section 8(a)(i) below, during the License Term, Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System and conducting inspections and studies related thereto; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) 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, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System.
- i. **Construction License.** During the Construction License Term, Purchaser grants Seller and Seller's contractors and subcontractors a non-exclusive license to use an area of the Premises to be designated by the Purchaser and reasonably acceptable to Seller exclusively as a laydown and construction staging area and for temporary storage (the "**Construction License**"). Notwithstanding Purchaser's grant of the License, all of Seller's construction-related activities must be confined to the area granted in the Construction License. Purchaser shall have no liability whatsoever in connection with property or equipment located in the area of the Construction License, excluding damage caused by the gross negligence or intentional misconduct of any Purchaser Party, and Seller shall indemnify Purchaser for any and all claims arising from the maintenance of such property or equipment; provided, Seller shall not be obligated to indemnify Purchaser for any loss, liability or claims arising out of the gross negligence or intentional misconduct of any Purchaser Party.
- ii. **License Terms.** The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). The term of the Construction License shall continue until the date that is the final completion date pursuant to the terms of the Construction Agreement (the "**Construction License Term**"). During the License Term and the Construction License Term, Purchaser shall ensure that Seller's rights under the License and the Construction License, as applicable, and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access.
- iii. **Parking Interference.** Notwithstanding Seller's rights under the License and the Construction License, Seller shall not be permitted to occupy any portion of the Premises in a manner that would cause one or more parking spaces to be unavailable for use without the prior written consent of Purchaser, which shall not be unreasonably withheld.
- iv. **Notice of Entry.** Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property.
- v. **Memorandum.** Seller may, at its sole cost and expense, record such memorandum of License in the form of Exhibit 5 or other form agreed by the Parties with the appropriate land registry or recorder's office.
- b. **OSHA Compliance.** Purchaser shall ensure that all OSHA requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- c. **Maintenance of Facility; System.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair; except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Seller, its employees, agents, contractors or consultants (together with Seller, collectively, the "**Seller Parties**" and individually, a "**Seller Party**"). If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than the negligence or willful misconduct of any Seller Party, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition, subject to the provisions of Section 15(b). The cost to repair or replace any portion of the Facility due to the negligence or willful misconduct or breach of this Agreement by any Seller Party shall be paid by Seller. Purchaser shall not be responsible for any work done by others on any part of the Facility unless Purchaser authorizes that

work in advance. Purchaser will use commercially reasonable efforts to ensure that the Facility remains interconnected to the local utility grid at all times and will not intentionally permit cessation of electric service to the Facility from the local utility, except during operational testing of back-up systems, not to exceed an aggregate of three (3) days in any Contract Year. 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, except to the extent required as a result of damage caused by the negligence, intentional misconduct or breach of this Agreement by any Seller Party. 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. Nothing in this Section shall remove Seller's obligation to maintain all locations of physical attachment between Systems and their applicable Facilities, such as roof penetrations, parking lot posts, etc. Seller shall be responsible to pay for the cost of any replacement or repair to the Facility required due to any damage to the Facility caused by the negligence, willful misconduct or breach of this Agreement by any Seller Party.

- d. **No Alteration of Facility.** If Purchaser wishes to make any alterations or repairs to the Facility that could adversely affect the operation and maintenance of the System, 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 and interference with System operations. To the extent that temporary disconnection or removal of the System or interference with the operation of the System is necessary to perform such alterations or repairs, (i) any such disconnection, removal or other alteration of the System shall be completed by Seller's contractors or contractors approved in advance in writing by Seller, in accordance with a procedure and schedule approved in advance in writing by Seller and Purchaser at Purchaser's sole cost and expense, (ii) to the extent the outage results in Purchaser exceeding its permitted Scheduled Outages pursuant to Section 8(e) below, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages and shall invoice Purchaser for such amount in accordance with Section 4, and (iii) 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. Purchaser shall be responsible to pay for the cost of any replacement or repair to the System required due to any damage to the System caused by the negligence, willful misconduct or breach of this Agreement any Purchaser Party. In performing its obligations under this Section 8(d), Seller shall use commercially reasonable efforts to incur costs reimbursable by Purchaser at standard market rates; provided, that Seller's reimbursable costs incurred in connection with the removal and replacement of the System shall not exceed an amount equal to Four Hundred and Twenty Dollars (\$420) per kW, as adjusted for inflation on the first day of each Contract Year by the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco area published by the Bureau of Labor Statistics. For purposes of clarification, Purchaser shall be responsible for all improvements, upgrades or repairs to the Facility, and Seller shall have no obligation to perform or pay for any improvements, upgrades or repairs to the Facility, except for any repairs resulting from the negligence, willful misconduct or breach of this Agreement by a Seller Party.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages caused or initiated by any Purchaser Party or necessitated due to damage to the Facility or the System for which Purchaser is responsible pursuant to this Agreement, 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 promptly notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and shall promptly cause the same to be discharged and released of record without expense to Seller or any Financing Party. Notwithstanding anything else herein to the contrary, pursuant to Section 19(a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, but no Financing Party lien may be placed on the Facility or the Premises of Purchaser.

- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System, with the exception of activities that are regularly conducted as part of the Facility's normal operations.
- 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 intentionally cause and, where reasonably possible, shall not in any way permit any material interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could materially diminish the Insolation of the System, Purchaser shall promptly notify Seller and shall reasonably cooperate with Seller in attempting to preserve the System's existing Insolation levels. Encroachment upon Insolation due to acknowledged pre-existing conditions, or due to privately-owned development or growth outside Purchaser's control, are not subject to Purchaser's obligations pursuant to this **Section 8(h)**. Upon Seller's written request, Purchaser will reasonably cooperate with Seller, at no expense to Purchaser, to secure a solar easement from a third party for the Premises to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System.
- i. **Data Line.** Purchaser shall provide Seller access to a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. Seller is responsible for providing all means of connection to the identified high speed internet data line, including boring, conduit, and wire, as applicable. If Purchaser fails to provide access to such high speed internet data line, Seller may install and operate a cellular modem communications device to acquire the necessary production data at Purchaser's expense.
- j. **Breakdown Notice.** Purchaser shall make reasonable attempts to notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to materially and adversely affect the System. Purchaser shall notify Seller as soon as possible upon 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 Parties' 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 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 and neither Party shall have further liability to the other Party except with respect to payment of amounts accrued prior to termination. For the avoidance of doubt, if Seller terminates the Agreement pursuant to the terms of this **Section 9**, no Termination Payment shall be payable by Purchaser hereunder.

## 10. **Relocation of System.**

- a. **System Relocation.** If Purchaser ceases to conduct operations at the Facility, or resolves to make an alternate use of some or all of the parking areas where the Facility is located, or otherwise vacates 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 ninety (90) 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 (a “**Relocation Amendment**”) that shall have all of the same terms as this Agreement except for the (i) License and Construction License, which will be amended to grant rights in the real property where the System relocated to; and (ii) Term, which will be equal to the remainder of the Term of this Agreement. Such Relocation Amendment shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties and in form and substance reasonably acceptable to Purchaser in connection with the substitute premises.

- b. **Costs of Relocation.** 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, the repair and restoration of the Facility as pursuant to Section 11 below, all costs of engineering, design, permitting, procurement of new System components, installation and testing of the System at the substitute facility, all costs to comply with CEQA, all applicable permit and interconnection fees and expenses at the substitute facility, the 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 and any costs incurred by Seller to modify financing documents or obtain any Financing Party’s consent to such relocation; provided, that (i) Purchaser and Seller shall cooperate in good faith to determine such costs and expenses prior to commencing with the System relocation and (ii) such actual costs and expenses paid by Purchaser shall be reasonable, documented and submitted to Purchaser promptly after the completion of the relocation. In addition, Seller shall reasonably estimate and invoice Purchaser for the amount of electricity that would have been delivered to Purchaser during the relocation of the System and Purchaser shall pay such invoiced amounts to Seller pursuant to Section 4(d) above.
- c. **Adjustment for Insolation; Termination.** Seller shall remove the System from the vacated Facility at Purchaser’s sole cost, within 45 days following the full execution of the Relocation Amendment by the Parties and Purchaser’s written direction to Seller to remove the System from the Facility. Seller shall restore the Facility to the condition required pursuant to Section 11 below at Purchaser sole cost and expense. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to include an adjustment to Exhibit 1 in the Relocation Amendment, to be agreed to prior to commencing with the System relocation, 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, the Agreement will deemed to be terminated by Purchaser pursuant to Section 3(c)(ii) and Purchaser shall promptly pay the applicable Termination Payment specified on Exhibit 4.

## **11. Removal of System at Expiration.**

- a. **Removal Obligations.** 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 one hundred eighty (180) days after the expiration of the Term. The Facility shall be returned to a condition at least as good as its original condition and in compliance with then-applicable building codes; provided, that Purchaser will be responsible for any cost of restoring the Facility to then-applicable building codes in excess of the estimated cost to restore the Facility to its original condition, ordinary wear and tear, alterations made by Purchaser and unrepaired damage caused by Purchaser or third parties excluded. Seller’s obligations under this Section 11 shall include the removal of System mounting pads or other support structures installed by Seller. 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 and Purchaser’s then-existing roof warranties. 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.
- b. **Decommissioning Fund.** No later than three hundred sixty five (365) days prior to the commencement of the sixth (6<sup>th</sup>) Contract Year, Seller shall provide Purchaser a written estimate of the cost to remove the System and restore the Facility as required pursuant to Section 11(a). The Parties shall meet and confer within thirty (30) days after such written estimate is received by Purchaser to resolve any concerns regarding such estimated cost. Seller shall

provide one of the following forms of security for the cost to remove the System and restore the Facility to the required condition beginning on the first day of the sixth (6<sup>th</sup>) month of the sixth (6<sup>th</sup>) Contract Year: (i) a performance bond covering such cost, (ii) an investment or deposit account established with a financial institution reasonably satisfactory to Purchaser, or (iii) a guaranty or letter of credit issued by a financial institution reasonably satisfactory to Purchaser. If Seller elects to provide security in the form of an investment or deposit account pursuant to clause (ii) above, (a) Seller shall fund such account in 27 equal installments, with each installment to be paid once every sixth (6<sup>th</sup>) months, and (b) concurrently with the opening of such investment or deposit account, the Parties shall enter into an agreement setting forth the terms and conditions by which withdrawals of the funds on deposit in such account can be made, which terms and condition shall be consistent with the terms hereof. Such security shall secure the costs to remove the System and restore the Facility to the condition required pursuant to Section 11(a) and Seller shall not be permitted to use such security for any other purpose. For avoidance of doubt, any funds remaining after the removal of the System and restoration of the Facility are the sole property of Seller. Seller, in its sole discretion, shall determine which form of security to post, and may replace one form of security for another form of security in an equal amount from time to time. In the event of a Seller Bankruptcy Event or Seller fails to remove the System within one hundred eighty (180) days of the expiration of the term or earlier termination of this Agreement, Purchaser shall have the right to use the applicable security and funds for the sole purpose of removal of the System and restoration of the Facility to the required condition and any remaining funds shall remain the property of the Seller or the Seller's Financing Parties, as applicable.

## 12. Measurement.

- a. **Meters.** The transfer of Energy from Seller to Purchaser shall be measured by a meter (a “**Meter**”) at the Delivery Point, which shall be selected, provided, installed, owned, maintained, programmed, tested and operated, at Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Current/Proposed Utility Tariffs set forth on Exhibit 2 and the interconnection agreement between Pacific Gas & Electric Company and Purchaser. A monitoring system with real time monitoring of the quantities and quality of Energy generated by the System shall also be installed for the System. Seller shall exercise reasonable care in the maintenance and operation of the Meters and the monitoring system and shall test and verify the accuracy of each Meter at least once every two (2) years. Seller shall inform Purchaser in advance of the time and date of these tests, and shall permit Purchaser to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of plus or minus two percent (2%) or better and monitoring results from Seller's Performance Monitoring and Reporting Service (“**PMRS**”) that is viewable by Purchaser at all times through an online portal. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website. If testing of the metering equipment indicates that such equipment is in error by more than two percent (2%), then Seller shall promptly repair or replace such equipment. Seller shall make a corresponding adjustment to the records of the amount of electricity delivered by the Facility based on such test results for (i) the actual period of time when such error caused inaccurate Meter readings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the most recent test confirming accurate metering or the date the Meter was placed into service, but not to exceed twelve (12) months. After the Commercial Operation Date, Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters (including pursuant to the requirements of any interconnection agreement). Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement, in addition to accurate weather information.
- b. **Interactive Display for Generating Facilities.** At a single location of Purchaser's choice, Seller will install a single monitor for viewing by the general public consisting of a 36” flat panel screen with a computer and keyboard sufficient to view the data acquisition system (“**DAS**”) monitoring of the System (the “**Interactive Display**”). The Interactive Display shall be housed in a cabinet, or on a wall, and the design, aesthetics, and cost of the Interactive Display shall be mutually agreed upon by Purchaser and Seller. Purchaser shall allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet or circuit. The total installed cost to Seller of such Interactive Display shall not exceed Two Thousand and 00/100 US Dollars (\$2,000). Following installation of the Interactive Display by Seller, Purchaser shall be responsible for all costs to repair, maintain and operate the hardware comprising the Interactive Display.

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**”:

- i. 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 thirty (30) days following receipt of written notice from the other Party (the “**Non-Defaulting Party**”) of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Purchaser loses its rights to occupy and enjoy the Premises;
- v. a Party, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect; or
- vi. Following the Commercial Operation Date, Seller fails to deliver at least 50% of its Expected Contract Quantity for such Contract Year, for two (2) consecutive years.

b. **Remedies.**

- i. **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 may terminate this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.
- ii. **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 may terminate this Agreement or suspend 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.
- iii. **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, for any given Contract Year, the amount set forth on **Exhibit 4, Attachment A** attached hereto, which annual amounts are calculated as (x) the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for (a) the loss or recapture of the investment tax credit equal to thirty percent (30%) of the System value, and (b) other financing and associated costs, (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section

13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller, less (y) any amount equal to the proceeds received by Seller in the sale of the System equipment and components which Seller shall use commercially reasonable efforts to consummate. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

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 (1) the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) 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, (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility, (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall comply with its obligations set forth in Section 11 at the sole cost and expense of the Defaulting Party. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

iv. Purchaser's Right to Operate. If a Seller Default Event occurs under Section 13(a), subject to the rights of the Financing Parties pursuant to Section 19 below, then Purchaser or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the System. Purchaser, its employees, contractors and designees shall have the unrestricted right to enter the System to the extent necessary to operate the System. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Purchaser as a result of the Purchaser's operation of, or election not to operate, the System. Purchaser shall pay Seller the applicable Contract Price for Energy provided hereunder, less any costs incurred by Purchaser to operate the System. Upon Purchaser's satisfaction that Seller has the ability to operate the System in accordance with this Agreement, Seller shall resume operational control.

#### 14. Representations and Warranties.

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

i. Due Organization, Etc. 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 or organizational document of such Party; 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).

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

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

- i. **License.** Purchaser has the full right, power and authority to grant the License contained in Section 8(a) and to enter into and perform all of Purchaser's obligations under this Agreement and any interconnection agreement entered into with the Utility. Such grant of the License and performance hereunder and under such interconnection agreement 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. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects to the extent of knowledge of the individual supplying the information.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.
- c. **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser the following:
  - i. **Other Agreements.** Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller or the System is bound.
  - ii. **No Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a material adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement.
  - iii. **Environmental Attributes.** Prior to conveyance to Purchaser, Seller holds and will hold until conveyed to Purchaser, the rights to all Environmental Attributes, which it has committed to convey to Purchaser hereunder.
  - iv. **Intellectual Property.** All of the intellectual property used by Seller in the conduct of its business or otherwise in its possession is either validly licensed or owned solely by Seller and Seller has the exclusive right to use and possess such intellectual property for the life thereof.
  - v. **Solvency.** From and after the Conditions Satisfaction Date, Seller shall have obtained financing commitments or otherwise have available to it financial resources sufficient to permit Seller to timely perform its obligations hereunder in accordance with the terms of this Agreement.

**15. System and Facility Casualty and Insurance.**

**a. System and Facility Casualty at End of Term.**

- i. **System.** Notwithstanding Seller's obligations in Section 7(d), 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 and pay Purchaser an amount equal to the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) 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, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value of the System.

- ii. **Facility.** Notwithstanding Purchaser's obligations in Section 8(c), if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.
  - iii. **Responsibility for Cost to Repair and Restore.** Nothing in this Section 15(a) shall alter the obligation of either Party to pay for the cost to repair and restore any damage caused by such Party as provided in 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 obtain and maintain the policies of insurance in amounts and with coverage as set forth on Exhibit 9.
  - ii. **Purchaser's Insurance.** Purchaser shall maintain property insurance in an amount equal to the full replacement cost of the Facility and commercial general liability insurance with coverage of at least Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate.
- c. **Policy Provisions.** All insurance policies provided by Seller hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (a) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (b) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party. Purchaser shall give Seller written notice of any cancellation, termination or non-renewal of insurance coverage within ten (10) days of obtaining knowledge thereof. Each Party shall ensure that the other Party is named as an additional insured on its commercial general liability policy. All Financing Parties shall be named as additional insureds on Purchaser's commercial general liability policies.
- d. **Certificates.** Annually and upon request by Purchaser, Seller shall deliver to Purchaser certificates of insurance evidencing the required coverage set forth on Exhibit 9 and a copy of the policy endorsement that adds Purchaser as an additional insured to the applicable commercial general liability insurance policy. Annually, Purchaser shall deliver to Seller a certificate of coverage provided to Seller by the California Joint Powers Risk Management Authority ("CJPRMA"), a California public agency risk sharing pool of which Purchaser is a member, and a copy of a certificate from Purchaser naming Seller as an additional insured to Purchaser's self-insurance pool for commercial general liability losses. Upon request by Seller, Purchaser shall deliver to Seller a copy of the memorandum of coverage provided by CJPRMA and available on its website. A Party's receipt, review or acceptance of any such certificate or memorandum 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.
- f. **Waiver of Subrogation.** Seller and Purchaser hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property with respect to loss of, or damage to the extent that such loss or damage is insured by a Third Party Insurance Policy issued by a Third Party Insurance Carrier applicable to the System, Facility or other property of Seller or Purchaser. Each party shall obtain any special endorsements, if required by its Third Party Insurance Carrier, whereby the Third Party Insurance Carrier waives its rights of subrogation against the other party as required by this Section 15(f). This provision is intended to waive fully, and for the benefit of the Parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any Third Party Insurance Carrier.

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 (excluding 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 Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax and accounting filings and reports will be filed in a manner consistent with this Agreement. It is the intent of Seller and Purchaser that the System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not be characterized, considered or deemed a fixture or affixed to or a part of the Facility or the Premises. 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, at Seller's cost, use commercially reasonable efforts to provide a disclaimer or release from such lienholder upon Seller's written request. 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 County office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser, at Seller's cost, will use commercially reasonable efforts to obtain such consent from such owner. With respect to any financing or refinancing of the System entered into by Seller after the Conditions Satisfaction Date, upon request, Purchaser agrees, at Seller's cost, to use commercially reasonable efforts 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. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the seventh (7<sup>th</sup>) and fifteenth (15<sup>th</sup>) 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 the Fair Market Value of the System as mutually agreed by the Parties or, if the Parties are unable to agree, the Fair Market Value of the System as determined by an appraiser. 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. For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in this Section 16(b), the Parties shall make best efforts to mutually agree on the Fair Market Value of the System. If the Fair Market Value cannot be mutually agreed upon, then the Parties shall use good faith commercially reasonable efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value, as of the final day of the applicable Contract Year ("**Buyout Date**"). Within thirty (30) days of the selection of such appraiser, s/he shall evaluate and determine the Fair Market Value of the applicable System as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be shared equally between Purchaser and Seller.
- c. **Definition of Fair Market Value.** "**Fair Market Value**" means the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing Purchaser, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition, and (ii) for any given Contract Year, the present value (using a discount rate of eight percent (8%)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity and Tax Credits and factoring in future costs and expenses associated with the System. If an appraiser is selected pursuant to Section 16(b), such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by any such appraiser shall be binding upon the Parties in the absence of fraud or manifest error.
- d. **Buyout Determination.** No later than sixty (60) days after determination of the Fair Market Value of the System, Purchaser shall confirm to Seller in writing of its intent to proceed or not to proceed with its option to purchase the System at the Fair Market Value. In the event Purchaser does not provide such written confirmation or elects not to

proceed with such option, the provisions of the Agreement shall continue to apply as if Purchaser had not exercised the option to purchase the System.

- e. **Buyout Obligations.** If Purchaser confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the applicable System to pass to Purchaser on the Buyout Date, free and clear of any liens, and (B) assign all warranties for the applicable System to Purchaser. Purchaser shall pay the Fair Market Value to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Purchaser by Seller for payments under the Agreement. Upon such execution of documents and payment of the Fair Market Value, this Agreement shall terminate automatically and Purchaser shall own the System and all Environmental Attributes, Environmental Incentives and any available Tax Credits relating to the System. For the avoidance of doubt, payment of the Fair Market Value shall be in lieu of and instead of any payments described in Section 4(a) accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with Purchaser to give prompt effect to this transfer. All other personal property of Seller not included in Purchaser's purchase shall be removed by Seller from Purchaser's premises at no cost to Purchaser. 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 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 not be liable under this Section 17(b) for any Claim for which such notice is not provided to extent such failure to delivery such 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, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by any Seller Party. 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, below or near the Premises of any Hazardous Substance, to the extent deposited, spilled or otherwise caused by any Purchaser Party. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises 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 total payments anticipated to be made by Purchaser during the Initial Term under this Agreement; provided with respect to any Claim made or Liability incurred prior to the issuance of notice to proceed, Seller’s aggregate liability shall not exceed the applicable Design Cancellation Payment. Purchaser’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 Termination Payment set forth in **Exhibit 4, Attachment A** for the year in which the Claim is made (such that if a Claim is made in one year and a second Claim is made in a second year, Seller will only be entitled to recover the difference (if any) between the amount recovered on the first Claim and the Termination Payment for the year in which the second Claim is made); provided that if the Claim is made or Liability incurred prior to the issuance of notice to proceed, Purchaser’s aggregate liability shall not exceed the applicable Design Cancellation Payment. The provisions of this **Section (17)(d)(ii)** (A) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise, (B) shall not limit the recovery by any Party under any insurance policy, (C) prior to the issuance of notice to proceed, shall not apply to limit the liability of any Party for claims for property damage or personal injury, and (D) following the issuance of notice to proceed, shall not apply to limit the liability of any Party for third party claims for property damage or personal injury.
- iii. **Non-Recoverable Costs.** In every instance pursuant to the terms of this Agreement where Purchaser has the option or is required to pay Seller the Termination Payment set forth in **Exhibit 4, Attachment A**, in no event shall Purchaser be liable for costs, not included in the Termination Payment set forth in **Exhibit 4, Attachment A**, incurred by Seller or any of its subcontractors after the termination date specified by Purchaser. Such non recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable.

**18. Force Majeure.**

- a. **Definition of Force Majeure.** “Force Majeure” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); theft; vandalism; collision with third party automobile, aircraft or space object (such as a meteor); sabotage; collapse of the Facility for any reason; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; hurricane; flood; lightning; acts of nature such as storms, floods, volcanic eruptions, forest fires, earthquakes; unavailability of electricity from the utility grid; failure of equipment not utilized by or under the control of the Party claiming Force Majeure; third-party challenge to the installation and operation of the System; and a budget non-appropriation event (as described in further detail in **Section 18(c)**). Notwithstanding the foregoing, “Force Majeure” shall specifically not include, without limitation, the failure or interruption of the production, delivery or acceptance of Electricity due to: economic hardship of either Party or insufficiency,

unavailability, failure or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure event.

- b. **Excuse Due to Force Majeure.** Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. **Non Appropriation Event.** Notwithstanding anything herein to the contrary, due to the constitutional limitations on Purchaser, a Force Majeure event shall include a “budget non-appropriation event” in which Purchaser’s appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Purchaser. During the continuation of a budget non-appropriation event as defined above, if Purchaser does not otherwise have other funds available to make payments otherwise due on this Agreement, Purchaser shall not be obligated to pay for (and Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Purchaser 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.
- d. **Termination Event.** Except as provided in Section 7(c)(v) above with respect to the extension of Milestones, if a Force Majeure event (other than a budget non-appropriate event, which is addressed in Section 18(c) above) continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid). For the avoidance of doubt, (i) if Purchaser terminates the Agreement pursuant to the terms of this Section 18(d), no Termination Payment shall be payable by Purchaser hereunder and (ii) Purchaser may not terminate this Agreement for a Force Majeure event that results in the extension of Milestones until such extensions exceed the amount permitted pursuant to Section 7(c)(v).

## 19. **Assignment and Financing.**

- a. **Assignment; Change of Control.** 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, provided that, Seller may, without the consent of Purchaser, assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party. Seller shall give Purchaser notice of any such collateral assignment within five (5) business days of making such assignment. Purchaser’s consent to any 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. In the event of any assignment, the assignor shall remain a primary obligor unless assignee shall expressly assume in writing all obligations under this Agreement. Any assignment of Seller’s rights and/or obligations under this Agreement shall not result in any change to Purchaser’s rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Except as provided below, any direct or indirect change of control of Seller shall be deemed an “assignment” hereunder, requiring the prior written consent of Purchaser, provided that any change of control that results (i) from a direct or indirect transfer of any membership interests in Seller or any entity of which Seller is a subsidiary to a Financing Party making a tax equity investment in the System or (ii) to an existing member of Seller or any entity which is a member of Seller, shall not constitute an “assignment” for the purposes of this Section 19 and shall not require the prior written consent of Purchaser. Seller shall give Purchaser notice of any such transfer to a Financing Party making a tax equity investment within five (5) business days of such transfer.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**Financing Parties**” means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. The term “**person**” means any natural person, unincorporated association, corporation, partnership, joint venture, limited liability company, trust, other legal entity or any Governmental Authority. Both Parties agree, at Seller’s expense, in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19(a), Purchaser agrees, at Seller’s expense, to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to Purchaser and such Financing Parties. Purchaser will agree, at Seller’s expense, to make payments under this Agreement as directed by Financing Parties, to provide copies of notices under the Agreement to Financing Parties, and not to amend or terminate this Agreement without notice to Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed, provided, that (i) such Successor Provider performs in accordance with the terms of this Agreement, and (ii) such Successor Provider (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.
- d. **Financing Party Rights.**
- i. **Notice.** Purchaser shall deliver to each Financing Party, concurrently with delivery thereof to Seller, a copy of every notice of default, notice of termination or intent to terminate this Agreement, and any notice delivered pursuant to Sections 13, 16 and/or 18 above. Any Financing Party shall have the right, but not the obligation, to perform any obligation of Seller under this Agreement and to cure any breach and/or Seller Default Event. Purchaser shall accept performance by or at the instigation of a Financing Party in fulfillment of Seller’s obligations, for the account of Seller and with the same force and effect as if performed by Seller. No performance by or on behalf of a Financing Party shall cause it to be deemed to be in possession of the System or bound by or liable under this Agreement.
- ii. **No Termination; Financing Party Cure Period.** Notwithstanding anything to the contrary contained herein, Purchaser agrees that it shall not terminate this Agreement for a Seller Default Event unless it has given all Financing Parties written notice in accordance with Section 19(d)(i) above and such Financing Parties fail to cure such Seller Default Event within a cure period calculated as follows: (a) for a Payment Default, the cure period set forth in Section 13(a)(i) above plus an additional thirty (30) days, and (b) for a Default Event other than a Payment Default, the cure period set forth in Section 13(a)(ii) above plus an additional sixty (60) days.
- iii. **Cure Requiring Possession.** If a Seller Default Event under this Agreement is of such a nature that it cannot be practicably cured without first taking possession of the System or is of a nature that is not susceptible of being cured by the Financing Parties, then Purchaser shall not be entitled to terminate this Agreement by reason of such Seller Default Event if and so long as (a) the Financing Parties proceed diligently to attempt to obtain possession of the System pursuant to the rights of the Financing Parties under the financing documents and (b) upon obtaining such possession, the Financing Parties shall proceed diligently to cure such Seller Default Event if the same is susceptible of being cured by the Financing Parties. The Parties acknowledge and agree that a Payment Default (x) is susceptible of being cured by the Financing Parties and (y) can be cured by the Financing Parties without first obtaining possession of the System.
- iv. **Effect of Cure.** The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the System if and when such default or Default Event is cured. If the

Financing Parties, or a purchaser through foreclosure under the financing documents or otherwise, shall (a) acquire title to the System and the rights under this Agreement, (b) cure all Payment Defaults and other defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be, and (c) assume all the obligations of Seller hereunder to the extent first accruing and arising from and after the date of such assumption, then (i) any default or Default Event of Seller which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Agreement, and (ii) Purchaser shall recognize the Financing Parties or such purchaser, as the case may be, as if such party had been the Seller under this Agreement.

- v. Exercise of Remedies. So long as the period for a Financing Party to exercise such Financing Party's cure rights for any Seller Default Event has not expired, Purchaser shall not (a) give any notice terminating or electing to terminate this Agreement, or (b) otherwise exercise any other rights or remedies under this Agreement by reason of such Seller Default Event.
- vi. No Amendment. Notwithstanding anything to the contrary in this Agreement, if Seller at any time or from time to time has given Purchaser written notice of a Financing Party, then no cancellation, termination (including Seller's termination of this Agreement pursuant to any express right of termination in this Agreement or under applicable law), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Agreement, or subordination of this Agreement to any encumbrance on the fee estate, shall be effective or binding if done without such Financing Party's prior written consent.

Seller's Financing Parties are hereby made express third party beneficiaries of the provisions of this Section 19.

- 20. California Public Records Act. Purchaser is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller proprietary information is contained in documents or information submitted to Purchaser, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, Purchaser will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Marin County before Purchaser's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Purchaser's deadline for responding to the CPRA request, Purchaser may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Purchaser harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys' fees) that may result from denial by Purchaser of a CPRA request for information arising from any representation, or any action (or inaction), by Seller.
- 21. Goodwill and Publicity. Neither Party shall use any name, trade name, agency name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, 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. Miscellaneous Provisions
  - a. Choice of Law. The law of California, the state where the System is located, shall govern this Agreement without giving effect to conflict of laws principles.
  - b. Dispute Resolution and Attorneys' Fees. Seller and Purchaser shall negotiate in good faith in the event of any dispute arising during the performance of this Agreement. If the dispute cannot be resolved by the designated representatives of each of Seller and Purchaser after two (2) business days of negotiations, at either Party's option the dispute may be promptly escalated to negotiations among representatives of the Parties with authority to resolve the dispute ("**Decision-Makers**"). If the designated Decision-Makers are unable to resolve the dispute within five (5) business days of negotiations, either Party may require that non-binding mediation take place. In such

mediation, the Decision-Makers shall meet for at least (3) hours with a mediator whom they choose together and their respective counsel. Any dispute that remains unresolved after such non-binding mediation shall be resolved in the state and federal courts located in Marin County, California. Each Party hereby submits to the personal jurisdiction of such courts and consents to service of process in connection with any action, suit or proceeding against such Party. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

- 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. **Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement. Seller shall cooperate with Purchaser's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option and sole cost of Purchaser. Seller shall have the option to make itself available onsite to review the progress of the project and Agreement, as requested by Purchaser, upon reasonable advanced notice. Seller agrees to extend to Purchaser or his/her designees and/or designated auditor of Purchaser, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Purchaser, state, and federal regulations are met, and that adequate internal fiscal controls are maintained. Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Purchaser audits. Seller shall pay to Purchaser the full amount of any audit determined to be due as a result of Purchaser audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.
- e. **Severability.** Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.
- f. **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 11 (Removal of System at Expiration), Section 13(b) (Remedies), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (California Public Records Act), Section 22(a) (Choice of Law), Section 22(b) (Dispute Resolution and Attorneys' Fees), Section 22(c) (Notices), Section 22(j) (Comparative Negligence), Section 22(k) (Non-Dedication of Facilities), Section 22(m) (Service Contract), Section 22(n) (No Partnership), Section 22(p) (Full Agreement, Modification, Invalidity, Counterparts, Captions), Section 22(q) (Forward Contract), Section 22(r) (No Third Party Beneficiaries), Section 22(u) (Debt Liability Disclaimer), and Section 22(w) (Conflict of Interest).
- g. **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.
- h. **Time is of the Essence.** Time is of the essence in performance by the Parties.
- i. **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 (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); 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.

- j. **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.
- k. **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.
- l. **Estoppel.** Either Party hereto, without charge but, in the event that Seller is the requesting Party, at Seller's expense, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- m. **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. Purchaser will not take the position in any public accounting or in any other filings suggesting that it is anything other than a purchase of electricity and receipt of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) from the System.
- n. **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.
- o. **Non-Exclusive Contract.** This Agreement does not establish an exclusive contract between Purchaser and Seller for the purchase of electricity or power or any services. Purchaser expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide Electricity, products, support and services beyond the System contemplated herein; the right to request proposals from others with or without requesting proposals from Seller; and the unrestricted right to bid any such product, support or service.
- p. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any exhibits, attachments or schedules, 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.

- q. **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.
- r. **No Third Party Beneficiaries.** Except as set forth in Section 19, 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.
- s. **Non-Discrimination.** Seller shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.
- t. **City Business License.** Seller shall obtain and maintain and shall cause its contractors and subcontractors to obtain and maintain during the duration of this Agreement, a City of San Rafael business license as required by the San Rafael Municipal Code. Seller shall pay and shall cause its contractors and subcontractors to pay any and all state and federal taxes and any other applicable taxes. Purchaser shall not be required to pay for any Energy provided under this Agreement, until Seller has provided Purchaser with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).
- u. **Debt Liability Disclaimer.** Purchaser, including, but not limited to, any source of funding for Purchaser, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of Seller or its heirs, successors or assigns. Purchaser shall not be liable for and shall be held harmless and indemnified by Seller for any claims for damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of Seller. Purchaser and its agencies and divisions, including, has no obligation to defend or undertake the defense on behalf of Seller or its heirs, successors or assigns.
- v. **Prevailing Wage.** Seller agrees it shall pay prevailing wages in connection with the construction and operation of the System.
- w. **Conflict of Interest.** Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

**Exhibit 4**  
**Attachment A**

Termination Payment

Contract Year	Termination Payment Amount
Installation Period	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
After Year 20	Fair Market Value



**Exhibit 4**  
**Attachment B**

**Subcontractors**

**End of Exhibit 4**

**Exhibit 5**  
**Form of Memorandum of License**

NOTICE OF GRANT OF CONTRACTUAL INTEREST

In accordance with the provisions of [\_\_\_\_], notice is hereby given of that Solar Power Purchase Agreement dated as of [\_\_\_\_] for purchase and sale of electrical energy (the “**Solar Agreement**”), such Solar Agreement includes the grant of License to Seller of energy, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Agreement:

Seller: [\_\_\_\_]  
[\_\_\_\_]  
[\_\_\_\_]

Purchaser : [\_\_\_\_]  
[\_\_\_\_]  
[\_\_\_\_]

Date of Execution of Solar Agreement: [\_\_\_\_]

Description of Premises: See **Exhibit 5, Attachment A**

TERM OF AGREEMENT:

The term of the Agreement shall be until the last day of the calendar month in which the twentieth (20th) anniversary of the Commercial Operation Date (as that term is defined in the Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Agreement.

[signature pages follow]

**Exhibit 5**  
**Attachment A**

Description of the Premises

*[City to provide]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013 .

Seller:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Purchaser:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

***[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]***



**Exhibit 6-1**

**Design and Engineering Requirements**

*[City to provide]*

**End of Exhibit 6-1**

**Exhibit 6-2**

**Equipment Warranties**

*[SolEd to provide]*

**End of Exhibit 6-2**

**Exhibit 7**

**Form of Attestation**

**Environmental Attribute Attestation**

[Name of Seller] ("Seller") hereby transfers and delivers to the [Name of Public Agency] ("Purchaser") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy (as such terms are defined in the Solar Power Purchase Agreement ("Agreement") dated [Date], between Purchaser and Seller) arising from the generation of the energy by the System described below:

Facility name and location: \_\_\_\_\_

EIA ID #: \_\_\_\_\_

CEC ID#: \_\_\_\_\_

ISO Meter ID#: \_\_\_\_\_

Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_

Commercial Operation Date: \_\_\_\_\_

Dates	MWhs generated	Dates MWhs generated
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

(Check one)

\_\_\_\_\_ Seller owns the facility.

\_\_\_\_\_ To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy have been generated and sold by the Facility.

This serves as a transfer from Seller to Purchaser all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy.

Contact Person: Name: \_\_\_\_\_ Phone: \_\_\_\_\_

WITNESS MY HAND,

Seller: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**End of Exhibit 7**



**Exhibit 8**

**Milestone Schedule**

*[SolEd to provide]*

**End of Exhibit 8**

**Exhibit 9**

**Insurance Requirements**

*[City to provide]*

**End of Exhibit 9**

**Exhibit 10**

**Seller and Purchaser Agreed Responsibilities**

*[SolEd to provide]*

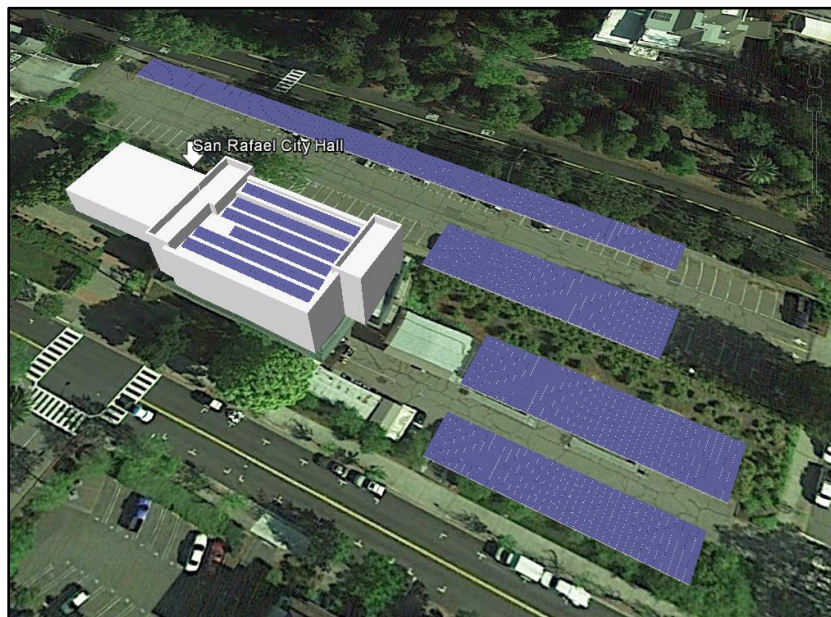
**End of Exhibit 10**

# **City of San Rafael Renewable Energy Projects**

**Proposed Site Concepts**

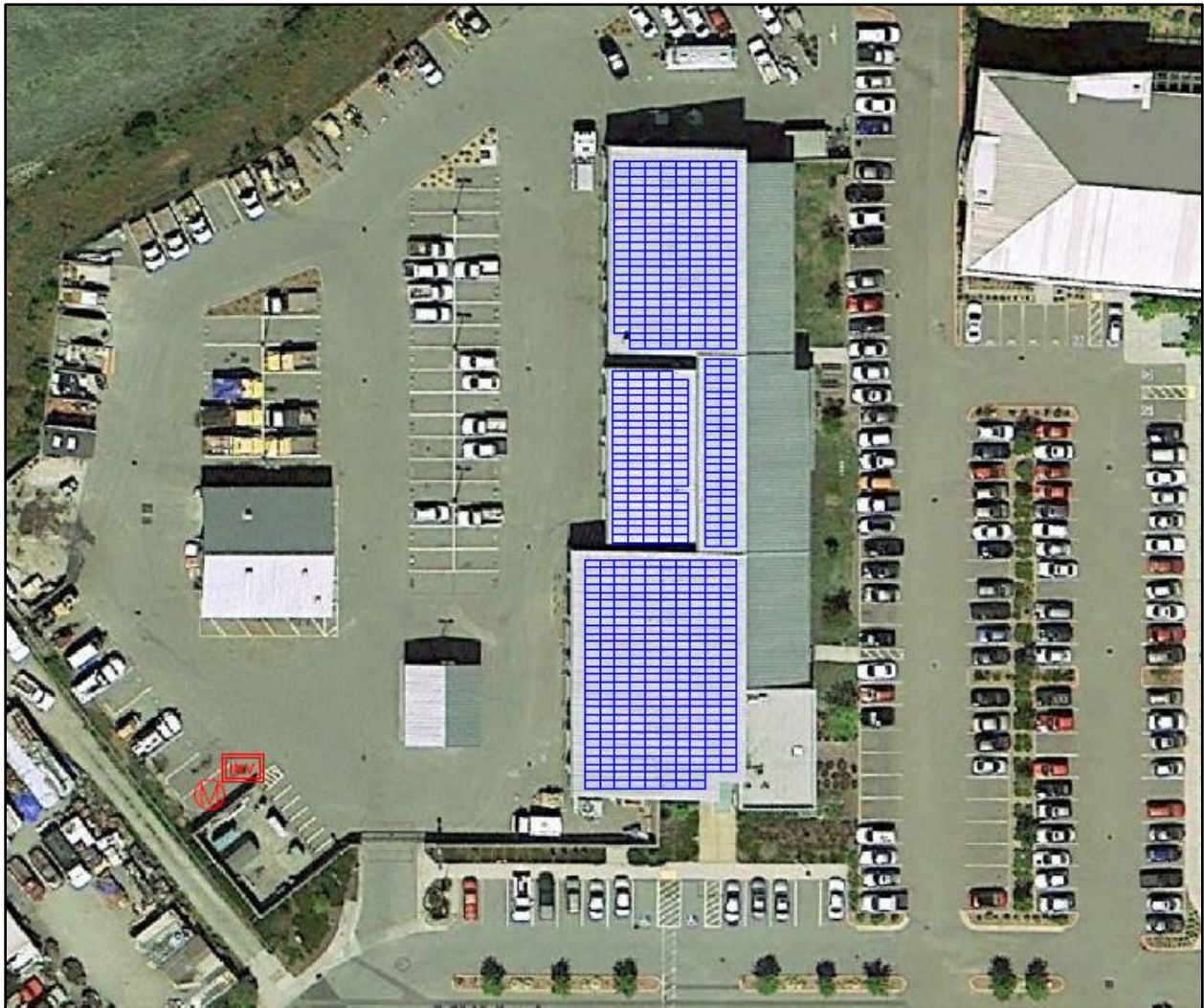
**July 2014**

# CITY HALL



Type:	Carport and Rooftop
Size:	316.8 kW-DC
Annual Output:	461,037 kWh
Annual GHG reduction:	203 tons
Description:	Pending in-depth analysis, the rooftop array will be ballasted but may require a minimum number of attachments to the structural members. Any penetrations will be sealed into the membrane roofing system. This array on the flat roof will be tilted up to 10 degrees. The four elevated arrays in the parking lots will have some impact from morning shade caused by a very tall Redwood tree at the east end of the property. All of these structures will be tilted at 7 degrees and will include lighting, as some existing lighting require removal.
Tree work:	Staff, including the City Arborist, will seek to minimize tree impact and will trim rather than remove wherever possible.
Outstanding issues:	Roof may need to be replaced prior to installation. Pending staff review.

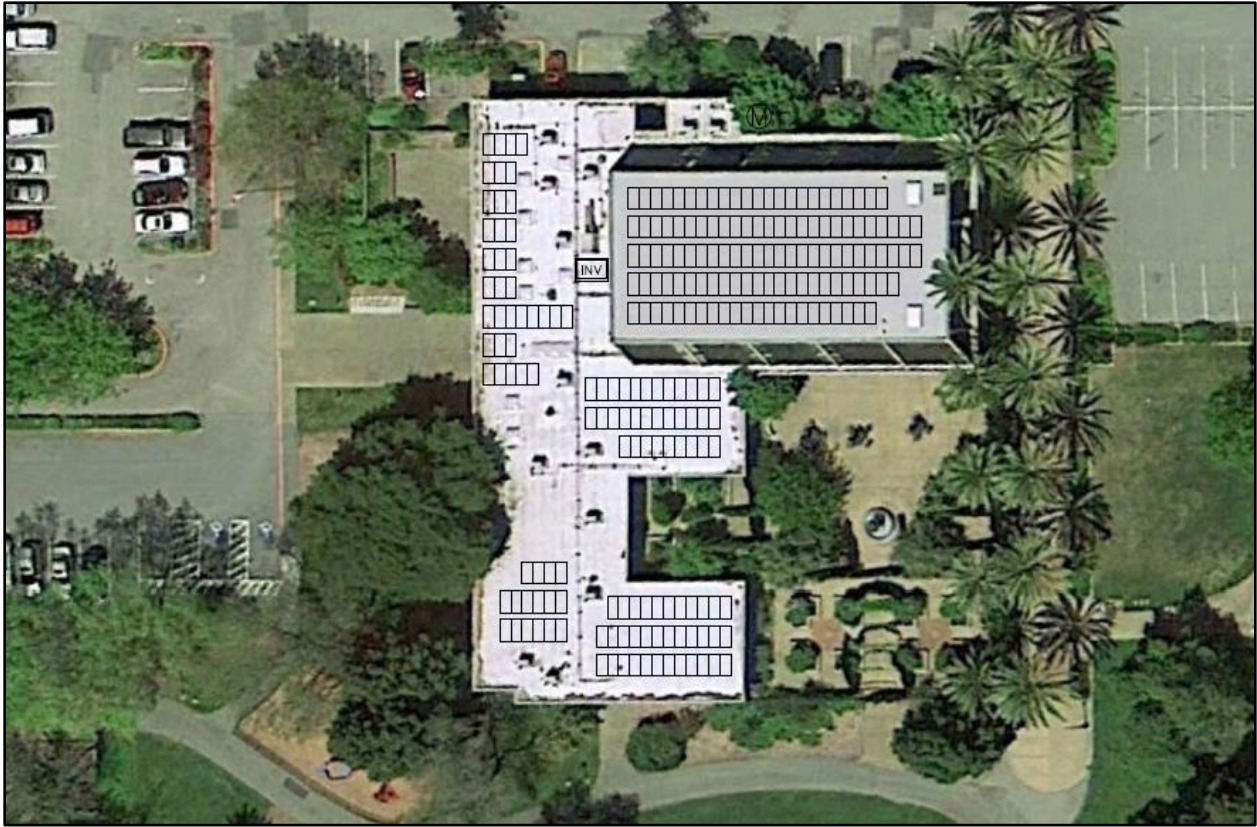
## DEPARTMENT OF PUBLIC WORKS – MORPHEW STREET



Type:	Rooftop
Size:	193.28 kW-DC
Annual Output:	261,192 kWh
Annual GHG reduction:	115 tons
Description:	The rooftop arrays will be fastened to a structurally sufficient component of the metal roof system. Additional analysis will be needed to determine whether the attachments can be secured to the standing seam roof or if specialized brackets can be fastened to the rafters/joists below and sealed to the flat sections of the roof pans.
Tree work:	None.
Outstanding issues:	None.

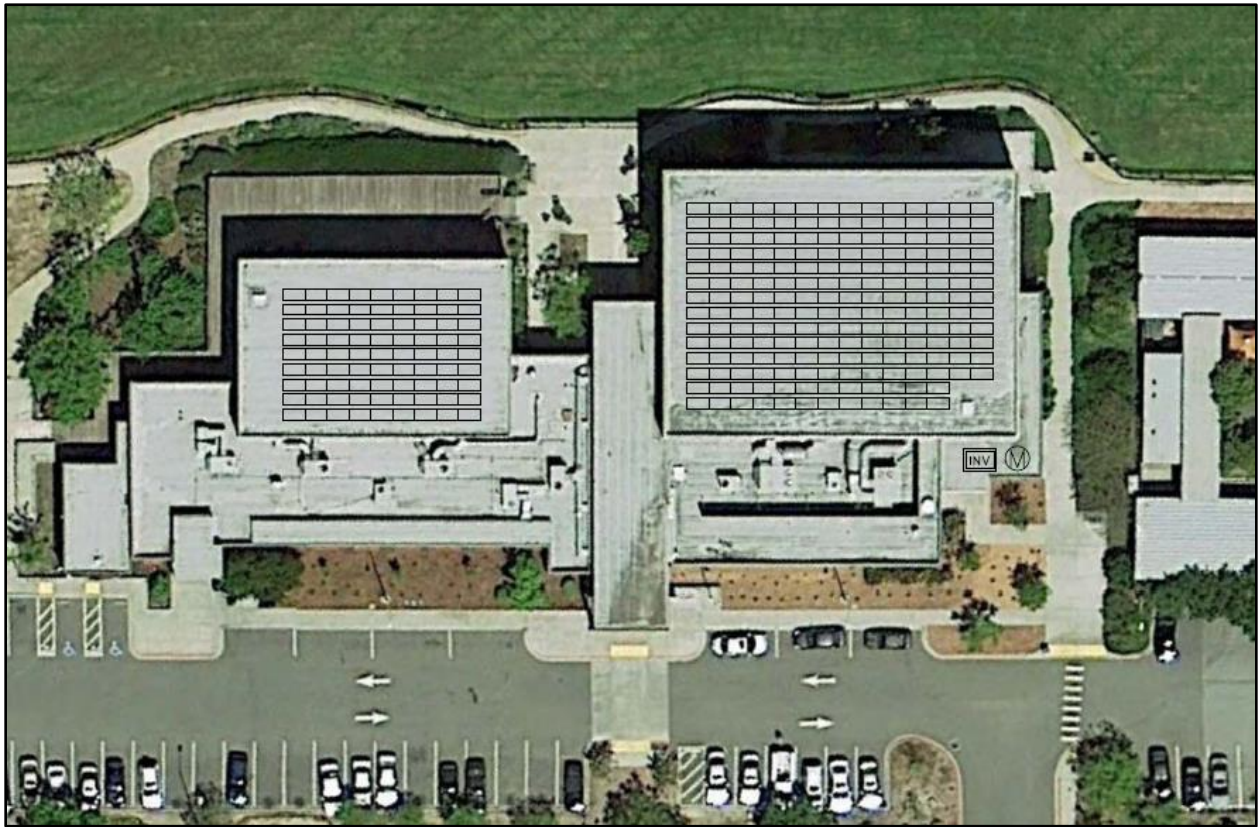


## SAN RAFAEL COMMUNITY CENTER



Type:	Rooftop
Size:	76.8 kW-DC
Annual Output:	110,968 kWh
Annual GHG reduction:	49 tons
Description:	The array on the upper roof will be ballasted. Following an in-depth analysis of the structure, a minimum number of attachments to the structural members and reduction of overall weight may be required. Any penetrations will be sealed into the torchdown roofing system. Arrays on the lower roofs will be fastened to the structural members with minimal ballast since they are too small to rely on ballast alone. All array racking on the flat roofs will be tilted up to 10 degrees.
Tree work:	Staff, including the City Arborist, will seek to minimize tree impact and will trim rather than remove wherever possible.
Outstanding issues:	Roof may need to be replaced prior to installation. Pending staff review.

## BORO COMMUNITY CENTER



Type:	Rooftop
Size:	87.04 kW-DC
Annual Output:	134,458 kWh
Annual GHG reduction:	59 tons
Description:	An extensive structural analysis will need to be performed prior to construction as the strength of the support members is unknown. A low-tilt racking system will be secured to the structure and penetrations will be sealed. The arrays will cover the two largest flat roofs, maintaining required access according to the Fire Marshal's guidelines.
Tree work:	None.
Outstanding issues:	Roof may need to be replaced prior to installation. Pending staff review.

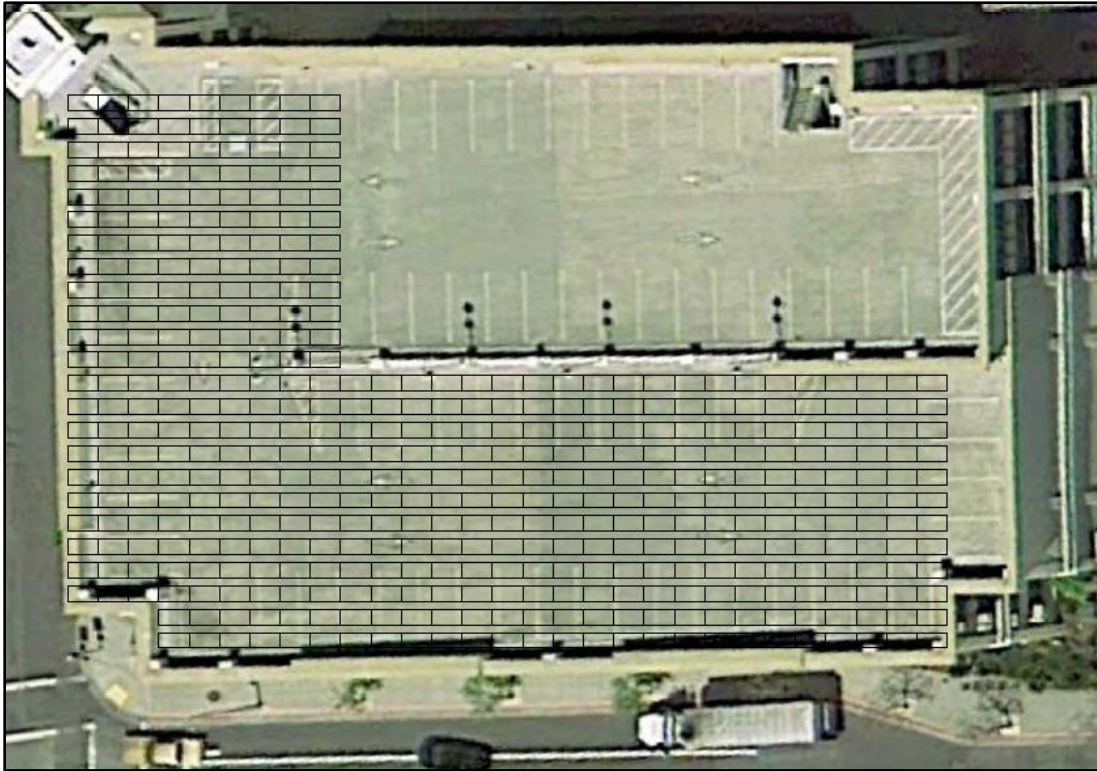


## TERRA LINDA COMMUNITY CENTER



Type:	Carport
Size:	97.92 kW-DC
Annual Output:	141,024 kWh
Annual GHG reduction:	62 tons
Description:	Installation of a solar carport structure over the east end of the parking lot, using an elevated array located in the parking lot adjacent to the pool. The array will provide some shade to half of the parking lot and the western portion of the pool deck and new lighting will be installed.
Tree work:	Staff, including the City Arborist, will seek to minimize tree impact and will trim rather than remove wherever possible.
Outstanding issues:	None.

## C STREET PARKING GARAGE



Type:	Carport
Size:	144 kW-DC
Annual Output:	221,529 kWh
Annual GHG reduction:	98 tons
Description:	The installation will include long span steel structures utilizing a truss system located on the C Street Parking Garage. Recent legislation (SB 594) *may allow us to interconnect one system at the C St Garage and use that energy to offset both C and A Street Garage meters. The A Street Garage would be credited virtually. Due to the consumption profile, the solar system will only need to offset 62.2% of the actual load to offset 100% of the electricity bills for both the C and A Street Garages.
Tree work:	None.
Outstanding issues:	*Pending determination of whether garage parcels are considered contiguous and if meters can be virtually linked.

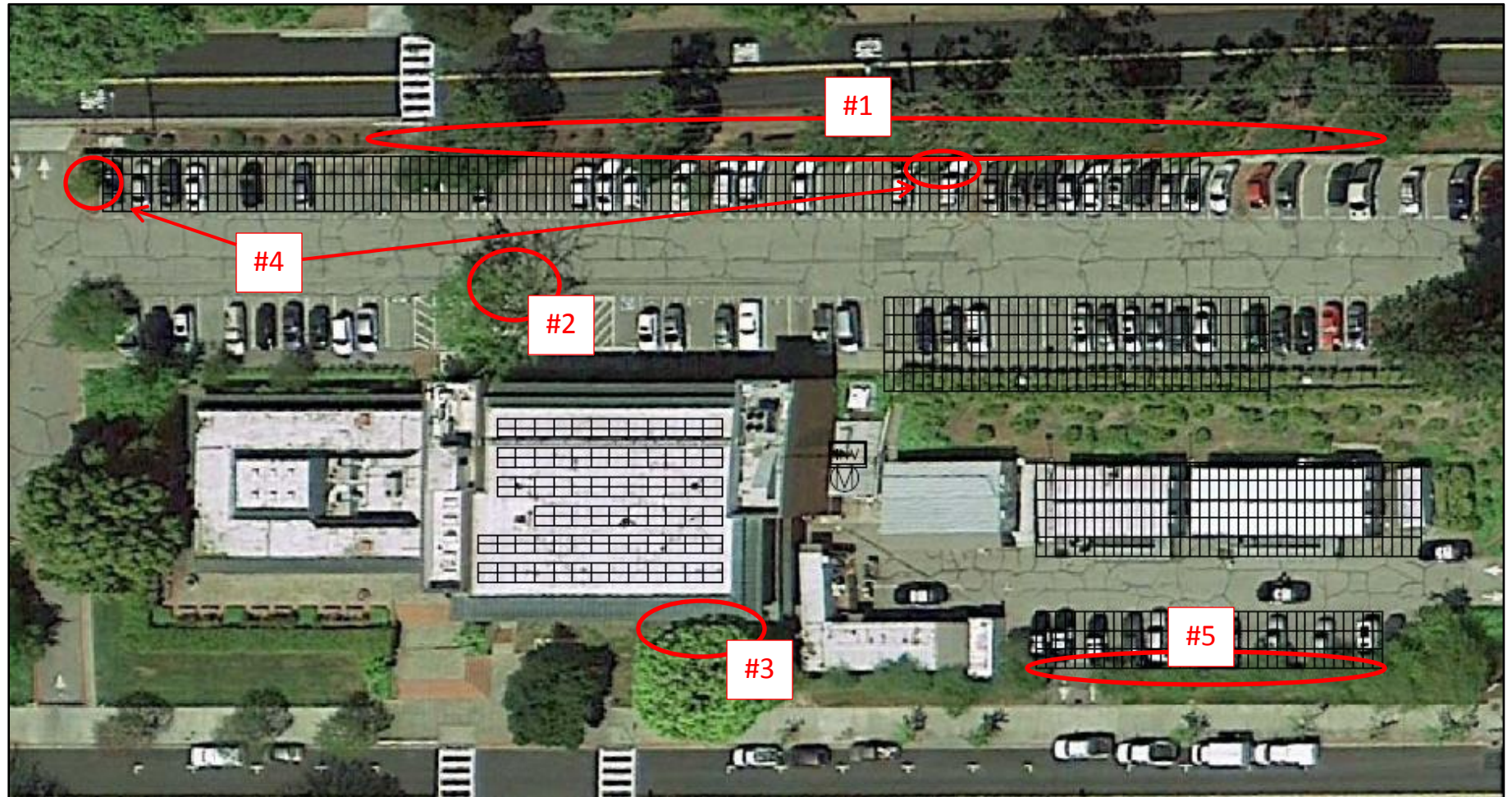
## TREE REPORT

Site	ID	# of trees in area	Type	Action Required	Responsibility	On-going Work Required*
City Hall	1	~7	Cypress	Remove 1-2 trees along Mission, west of power pole	Sunetric	N/A
				Trim to avoid carport structure	City	Trim every 5 years
	2	1	Oak	Trim 8-10 feet from top as feasible	City	Trim every 5-10 years
	3	1	Camphor	Trimming not needed now, but City may want to trim top pre-emptively	City	Trim every 5-10 years
	4	2	Jacaranda	Remove tree to east; trim tree to west	Sunetric	N/A
	5	6-7	Cherry	Remove only trees located under carport structure	Sunetric	N/A
Community Center	1	1	Oak	Trim oak overhanging roof. Trim away from building.	City	Trim every 3-5 years
	2	1	Japanese Maple	Trim parts overhanging roof/drain.	City	Trim every 5 years
	3	2	Palm	None at this time.	City	Trim every 2 years
	4	1	Ash	Trim away from building.	City	Trim every 3-5 years
	5	2	Redwood	None.	N/A	None. Will cause afternoon shading.
	6	2	Italian Cypress	None at this time.	City	Trim top as needed
Terra Linda Community Center	1	1	Monterey Pine	Remove tree	Sunetric	N/A
	2	2	Tristania	None at this time.	City	Trim every 10-15 years
Department of Public Works – Morphew Street	No tree work required.					
Boro Community Center	No tree work required.					
C Street Parking Garage	No tree work required.					

\*All on-going work to be completed by the City

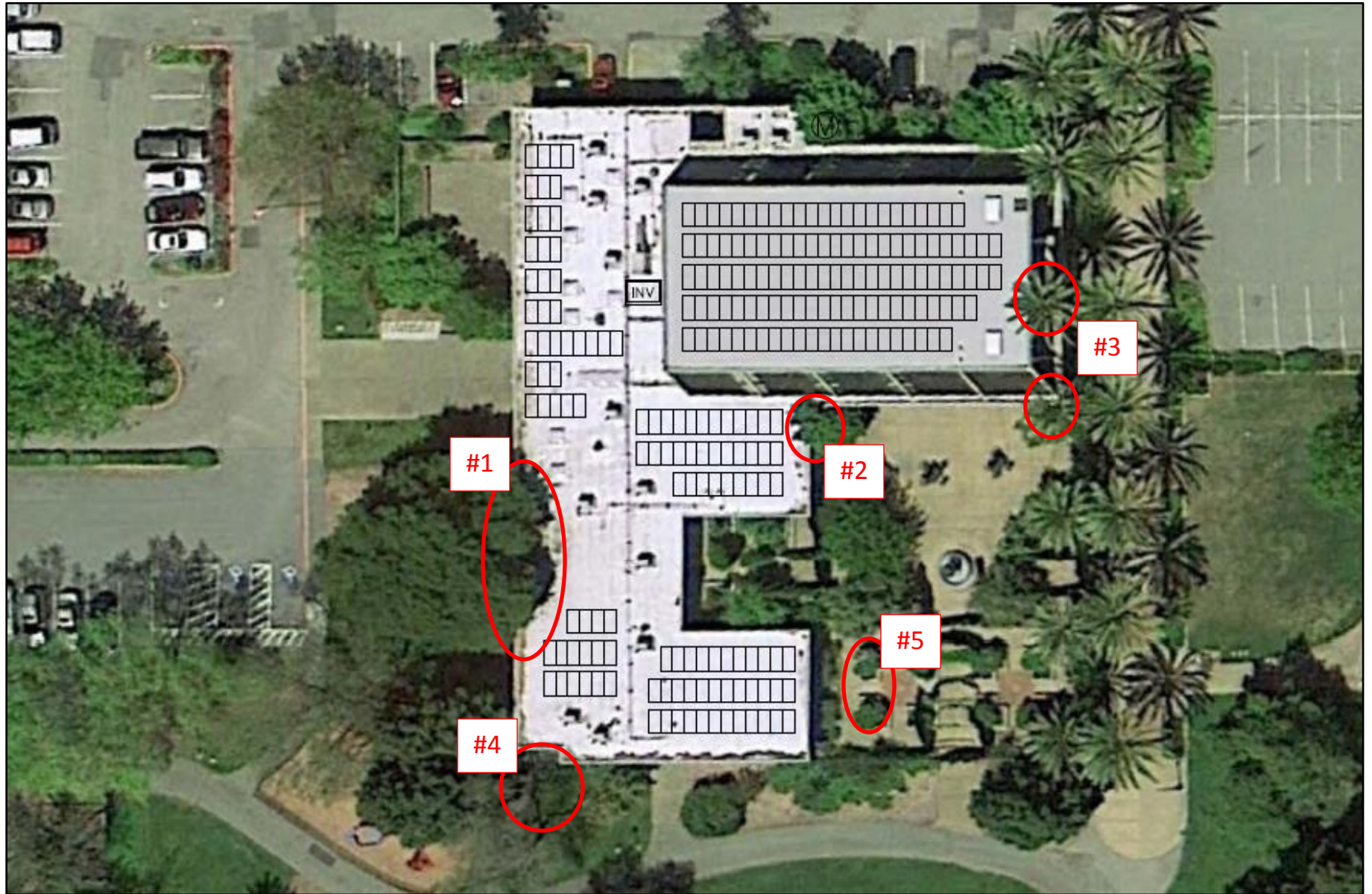


## City Hall



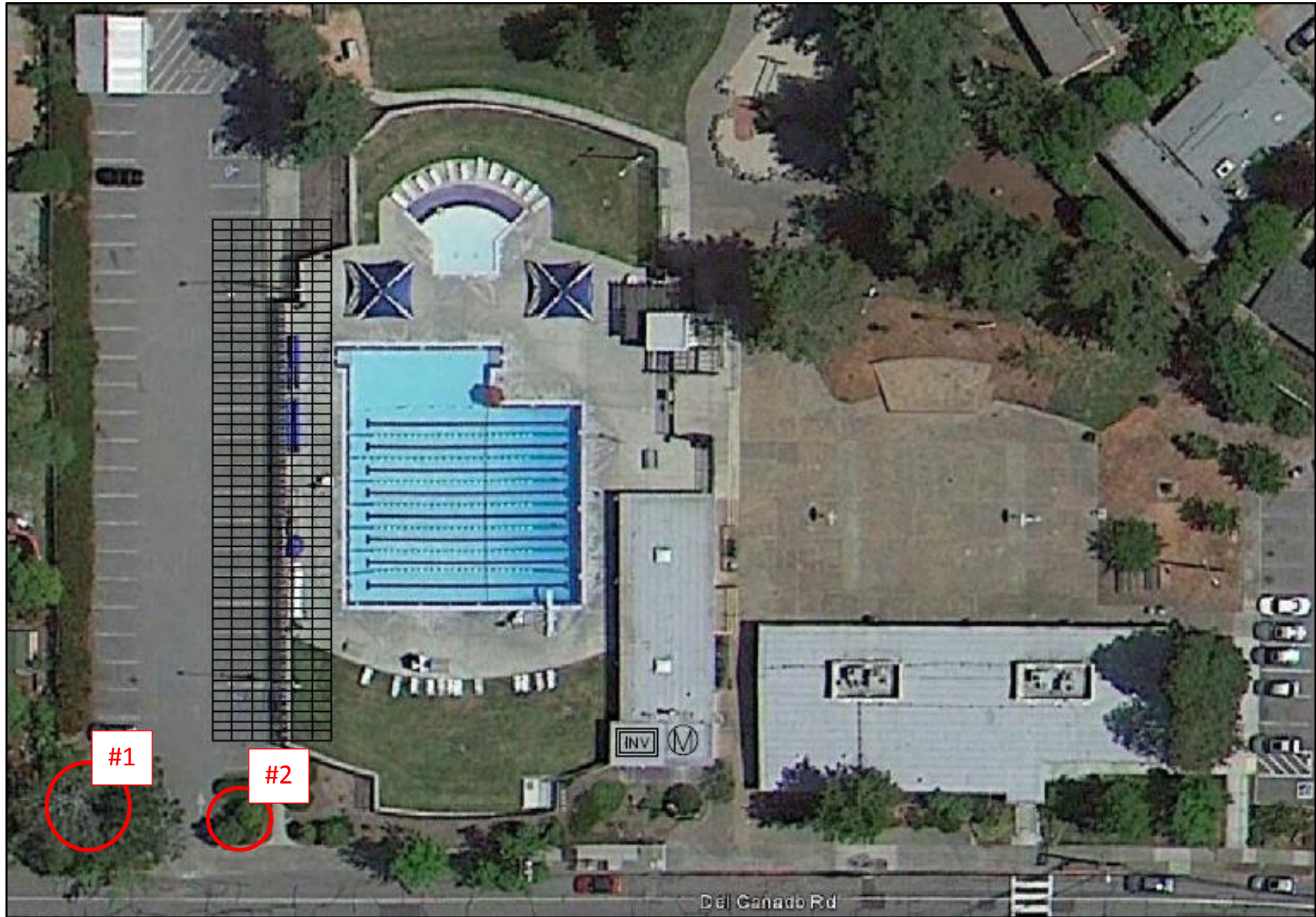


## San Rafael Community Center – B Street





## Terra Linda Community Center



Solar Array Cost and Output	
System Size (kW, DC)	316.8
System EPBB Output (kWh)	438,788
System Cost w/o discount	\$1,084,121
Sytem Output Per DC kW	1,385
System Cost Per DC Watt	\$3.42

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.1974
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	575,200
Current Utility Rate (\$/kWh)	0.1627
Utility Cost Escalator	4.0%
Solar Usage Offset	76.3%
Solar Bill Offset	97.6%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	93,568	438,788	2,235	86,617	4,716
2	97,311	436,594	2,799	88,338	6,173
3	101,203	434,411	3,403	90,094	7,706
4	105,251	432,239	4,047	91,885	9,319
5	109,461	430,078	4,736	93,711	11,015
6	113,840	427,927	5,470	95,573	12,797
7	118,393	425,788	6,252	97,473	14,669
8	123,129	423,659	7,085	99,410	16,634
9	128,054	421,541	7,972	101,386	18,696
10	133,176	419,433	8,915	103,401	20,860
11	138,503	417,336	9,918	105,456	23,129
12	144,044	415,249	10,983	107,552	25,508
13	149,805	413,173	12,115	109,690	28,001
14	155,798	411,107	13,315	111,870	30,613
15	162,030	409,051	14,589	114,093	33,348
16	168,511	407,006	15,939	102,170	50,401
17	175,251	404,971	17,370	91,494	66,388
18	182,261	402,946	18,886	81,932	81,443
19	189,552	400,932	20,491	73,371	95,690
20	197,134	398,927	22,189	65,703	109,241
21	205,019	396,932	23,987	65,375	115,658
22	213,220	394,948	25,888	65,048	122,284
23	221,749	392,973	27,897	64,723	129,129
24	230,619	391,008	30,021	64,399	136,198
25	239,843	389,053	32,265	64,077	143,501
20 Yr Total	2,786,275	8,371,155	208,709	1,911,218	666,349
Savings Percentage					23.9%
20 Yr NPV of Savings at 4%					382,697
20 Yr NPV of Savings at 8%					233,662
25 Yr Total	3,896,724	10,336,069	348,766	2,234,839	1,313,119
Savings Percentage					33.7%
25 Yr NPV of Savings at 4%					649,639
25 Yr NPV of Savings at 8%					347,951

Solar Array Cost and Output	
System Size (kW, DC)	193.3
System EPBB Output (kWh)	264,019
System Cost w/o discount	\$664,883
Sytem Output Per DC kW	1,366
System Cost Per DC Watt	\$3.44

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.2079
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	347,599
Current Utility Rate (\$/kWh)	0.1759
Utility Cost Escalator	4.0%
Solar Usage Offset	76.0%
Solar Bill Offset	100.0%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	61,136	264,019	-	54,890	6,246
2	63,581	262,699	318	55,980	7,283
3	66,125	261,385	660	57,093	8,372
4	68,770	260,078	1,026	58,228	9,515
5	71,520	258,778	1,420	59,385	10,716
6	74,381	257,484	1,841	60,565	11,975
7	77,357	256,197	2,292	61,769	13,296
8	80,451	254,916	2,774	62,997	14,680
9	83,669	253,641	3,289	64,249	16,131
10	87,016	252,373	3,838	65,526	17,652
11	90,496	251,111	4,424	66,828	19,244
12	94,116	249,856	5,049	68,156	20,911
13	97,881	248,606	5,714	69,511	22,656
14	101,796	247,363	6,422	70,892	24,482
15	105,868	246,126	7,175	72,301	26,392
16	110,102	244,896	7,975	64,746	37,382
17	114,507	243,671	8,825	57,980	47,702
18	119,087	242,453	9,727	51,921	57,438
19	123,850	241,241	10,685	46,495	66,670
20	128,804	240,035	11,701	41,637	75,467
21	133,957	238,834	12,778	41,428	79,750
22	139,315	237,640	13,919	41,221	84,174
23	144,887	236,452	15,128	41,015	88,744
24	150,683	235,270	16,408	40,810	93,465
25	156,710	234,093	17,763	40,606	98,342

20 Yr Total	1,820,513	5,036,929	95,155	1,211,150	514,208
Savings Percentage					28.2%
20 Yr NPV of Savings at 4%					303,473
20 Yr NPV of Savings at 8%					191,153

25 Yr Total	2,546,064	6,219,219	171,151	1,416,231	958,683
Savings Percentage					37.7%
25 Yr NPV of Savings at 4%					486,943
25 Yr NPV of Savings at 8%					269,714



Solar Array Cost and Output	
System Size (kW, DC)	144.0
System EPBB Output (kWh)	211,586
System Cost w/o discount	\$720,000
Sytem Output Per DC kW	1,469
System Cost Per DC Watt	\$5.00

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.2751
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	339,937
Current Utility Rate (\$/kWh)	0.1781
Utility Cost Escalator	4.0%
Solar Usage Offset	62.2%
Solar Bill Offset	100.0%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	60,557	211,586	-	58,207	2,350
2	62,979	210,528	315	59,364	3,300
3	65,498	209,475	653	60,544	4,301
4	68,118	208,428	1,017	61,747	5,354
5	70,843	207,386	1,406	62,975	6,462
6	73,677	206,349	1,824	64,226	7,627
7	76,624	205,317	2,270	65,503	8,851
8	79,689	204,291	2,748	66,805	10,137
9	82,876	203,269	3,258	68,132	11,487
10	86,191	202,253	3,802	69,486	12,903
11	89,639	201,242	4,382	70,867	14,389
12	93,225	200,235	5,001	72,276	15,948
13	96,954	199,234	5,660	73,712	17,581
14	100,832	198,238	6,361	75,177	19,293
15	104,865	197,247	7,107	76,672	21,087
16	109,060	196,261	7,899	68,659	32,501
17	113,422	195,279	8,741	61,485	43,196
18	117,959	194,303	9,635	55,059	53,264
19	122,677	193,331	10,584	49,306	62,788
20	127,584	192,365	11,590	44,153	71,841
21	132,688	191,403	12,657	43,932	76,098
22	137,995	190,446	13,787	43,713	80,495
23	143,515	189,494	14,985	43,494	85,036
24	149,256	188,546	16,253	43,277	89,726
25	155,226	187,603	17,594	43,060	94,571

20 Yr Total	1,803,271	4,036,617	94,253	1,284,357	424,661
Savings Percentage					23.5%
20 Yr NPV of Savings at 4%					241,839
20 Yr NPV of Savings at 8%					146,183

25 Yr Total	2,521,951	4,984,110	169,530	1,501,834	850,588
Savings Percentage					33.7%
25 Yr NPV of Savings at 4%					417,627
25 Yr NPV of Savings at 8%					221,443

Solar Array Cost and Output	
System Size (kW, DC)	87.6
System EPBB Output (kWh)	127,491
System Cost w/o discount	\$281,341
Sytem Output Per DC kW	1,455
System Cost Per DC Watt	\$3.21

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.1952
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	160,395
Current Utility Rate (\$/kWh)	0.1855
Utility Cost Escalator	4.0%
Solar Usage Offset	79.5%
Solar Bill Offset	99.5%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	29,758	127,491	142	24,886	4,730
2	30,948	126,854	302	25,381	5,266
3	32,186	126,219	473	25,885	5,828
4	33,474	125,588	657	26,400	6,417
5	34,813	124,960	854	26,924	7,034
6	36,205	124,335	1,065	27,460	7,681
7	37,653	123,714	1,290	28,005	8,358
8	39,159	123,095	1,531	28,562	9,067
9	40,726	122,480	1,788	29,130	9,809
10	42,355	121,867	2,062	29,709	10,585
11	44,049	121,258	2,354	30,299	11,396
12	45,811	120,652	2,665	30,901	12,245
13	47,644	120,048	2,996	31,515	13,133
14	49,549	119,448	3,348	32,142	14,060
15	51,531	118,851	3,722	32,781	15,029
16	53,592	118,257	4,119	29,355	20,118
17	55,736	117,665	4,541	26,287	24,908
18	57,966	117,077	4,989	23,540	29,436
19	60,284	116,492	5,464	21,080	33,740
20	62,696	115,909	5,968	18,878	37,850
21	65,203	115,330	6,501	18,783	39,919
22	67,812	114,753	7,067	18,689	42,056
23	70,524	114,179	7,665	18,596	44,263
24	73,345	113,608	8,299	18,503	46,543
25	76,279	113,040	8,969	18,410	48,900

20 Yr Total	886,136	2,432,261	50,327	549,120	286,688
Savings Percentage					32.4%
20 Yr NPV of Savings at 4%					173,097
20 Yr NPV of Savings at 8%					111,760

25 Yr Total	1,239,299	3,003,172	88,828	642,102	508,369
Savings Percentage					41.0%
25 Yr NPV of Savings at 4%					264,614
25 Yr NPV of Savings at 8%					150,952

Solar Array Cost and Output	
System Size (kW, DC)	75.6
System EPBB Output (kWh)	104,587
System Cost w/o discount	\$236,575
Sytem Output Per DC kW	1,383
System Cost Per DC Watt	\$3.13

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.2068
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	155,120
Current Utility Rate (\$/kWh)	0.1933
Utility Cost Escalator	4.0%
Solar Usage Offset	67.4%
Solar Bill Offset	97.4%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	29,982	104,587	792	21,629	7,562
2	31,181	104,064	975	22,058	8,148
3	32,429	103,544	1,171	22,497	8,761
4	33,726	103,026	1,381	22,944	9,401
5	35,075	102,511	1,604	23,400	10,071
6	36,478	101,998	1,842	23,865	10,770
7	37,937	101,488	2,096	24,339	11,501
8	39,454	100,981	2,366	24,823	12,265
9	41,032	100,476	2,654	25,317	13,062
10	42,674	99,974	2,959	25,820	13,895
11	44,381	99,474	3,284	26,333	14,764
12	46,156	98,976	3,629	26,856	15,670
13	48,002	98,482	3,996	27,390	16,617
14	49,922	97,989	4,384	27,934	17,604
15	51,919	97,499	4,796	28,490	18,633
16	53,996	97,012	5,233	25,512	23,250
17	56,156	96,527	5,696	22,846	27,613
18	58,402	96,044	6,186	20,459	31,757
19	60,738	95,564	6,705	18,321	35,712
20	63,168	95,086	7,255	16,406	39,507
21	65,694	94,610	7,836	16,324	41,534
22	68,322	94,137	8,450	16,243	43,629
23	71,055	93,667	9,099	16,162	45,794
24	73,897	93,198	9,785	16,081	48,031
25	76,853	92,732	10,510	16,000	50,343

20 Yr Total	892,806	1,995,301	69,005	477,240	346,561
Savings Percentage					38.8%
20 Yr NPV of Savings at 4%					215,015
20 Yr NPV of Savings at 8%					142,771

25 Yr Total	1,248,628	2,463,646	114,685	558,049	575,893
Savings Percentage					46.1%
25 Yr NPV of Savings at 4%					309,710
25 Yr NPV of Savings at 8%					183,332

Solar Array Cost and Output	
System Size (kW, DC)	99.6
System EPBB Output (kWh)	134,637
System Cost w/o discount	\$346,309
Sytem Output Per DC kW	1,352
System Cost Per DC Watt	\$3.48

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.2236
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	170,120
Current Utility Rate (\$/kWh)	0.1975
Utility Cost Escalator	4.0%
Solar Usage Offset	79.1%
Solar Bill Offset	99.6%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	33,598	134,637	141	30,105	3,352
2	34,942	133,964	321	30,703	3,918
3	36,340	133,294	513	31,313	4,513
4	37,793	132,628	720	31,936	5,137
5	39,305	131,964	942	32,570	5,793
6	40,877	131,305	1,179	33,218	6,480
7	42,512	130,648	1,433	33,878	7,202
8	44,213	129,995	1,704	34,551	7,958
9	45,981	129,345	1,993	35,238	8,750
10	47,820	128,698	2,301	35,938	9,581
11	49,733	128,055	2,630	36,653	10,451
12	51,723	127,414	2,980	37,381	11,361
13	53,791	126,777	3,353	38,124	12,315
14	55,943	126,143	3,749	38,882	13,312
15	58,181	125,513	4,171	39,655	14,356
16	60,508	124,885	4,618	35,511	20,379
17	62,928	124,261	5,094	31,800	26,035
18	65,446	123,639	5,598	28,477	31,371
19	68,063	123,021	6,133	25,501	36,429
20	70,786	122,406	6,701	22,836	41,249
21	73,617	121,794	7,302	22,722	43,594
22	76,562	121,185	7,939	22,608	46,015
23	79,625	120,579	8,613	22,495	48,516
24	82,810	119,976	9,327	22,383	51,100
25	86,122	119,376	10,082	22,271	53,769

20 Yr Total	1,000,484	2,568,592	56,273	664,270	279,942
Savings Percentage					28.0%
20 Yr NPV of Savings at 4%					165,063
20 Yr NPV of Savings at 8%					103,865

25 Yr Total	1,399,219	3,171,503	99,535	776,749	522,935
Savings Percentage					37.4%
25 Yr NPV of Savings at 4%					265,366
25 Yr NPV of Savings at 8%					146,814

Solar Array Cost and Output	
System Size (kW, DC)	916.9
System EPBB Output (kWh)	1,281,108
System Cost w/o discount	\$3,333,229
Sytem Output Per DC kW	1,397
System Cost Per DC Watt	\$3.64

PPA Year 1 Base Rate (\$/kWh) and Escalator	
Undiscounted PPA	0.2157
Escalator, yr 1-15	2.5%
De-Escalator, yr 16-20	-10.0%

Utility and Usage Information	
Current Utility Usage (kWh)	1,748,371
Current Utility Rate (\$/kWh)	0.1765
Utility Cost Escalator	4.0%
Solar Usage Offset	73.3%
Solar Bill Offset	98.9%

Year	Projected Utility Cost w/o Solar	Solar Output (kWh)	Residual Utility Cost With Solar	Base PPA Rate	
				Payment	Savings
1	308,599	1,281,108	3,310	276,333	28,956
2	320,943	1,274,702	5,030	281,825	34,088
3	333,781	1,268,329	6,874	287,427	39,480
4	347,132	1,261,987	8,848	293,139	45,144
5	361,017	1,255,677	10,961	298,965	51,090
6	375,458	1,249,399	13,220	304,907	57,330
7	390,476	1,243,152	15,633	310,967	63,876
8	406,095	1,236,936	18,207	317,148	70,740
9	422,339	1,230,752	20,952	323,451	77,935
10	439,233	1,224,598	23,878	329,880	85,475
11	456,802	1,218,475	26,993	336,436	93,373
12	475,074	1,212,382	30,307	343,123	101,644
13	494,077	1,206,321	33,832	349,942	110,302
14	513,840	1,200,289	37,579	356,897	119,364
15	534,394	1,194,287	41,559	363,991	128,844
16	555,769	1,188,316	45,784	325,954	184,032
17	578,000	1,182,374	50,267	291,892	235,841
18	601,120	1,176,463	55,022	261,389	284,709
19	625,165	1,170,580	60,063	234,074	331,029
20	650,172	1,164,727	65,404	209,613	375,155
21	676,178	1,158,904	71,061	208,565	396,553
22	703,226	1,153,109	77,050	207,522	418,654
23	731,355	1,147,344	83,388	206,485	441,482
24	760,609	1,141,607	90,093	205,452	465,064
25	791,033	1,135,899	97,183	204,425	489,425
20 Yr Total	9,189,485	24,440,855	573,722	6,097,355	2,518,409
Savings Percentage					27.4%
20 Yr NPV of Savings at 4%					1,481,184
20 Yr NPV of Savings at 8%					929,395
25 Yr Total	12,851,886	30,177,718	992,495	7,129,803	4,729,587
Savings Percentage					36.8%
25 Yr NPV of Savings at 4%					2,393,899
25 Yr NPV of Savings at 8%					1,320,207

