CITY OF MORGAN HILL

Contract Award Notice

CONTRACT TITLE: POWER PURCHASE AGREEMENT

AWARD DATE: July 27, 2011

EFFECTIVE DATE: August 15, 2011

CONTRACT PERIOD: 20 Years from the Commercial Operation Date

SERVICE: Electricity Service Provision

BUYER NAME: City of Morgan Hill

BUYER CONTACT: Anthony Eulo

TITLE: Project Manager

BUYER TEL: (408) 779-7271

BUYER EMAIL: Anthony.Eulo@morganhill.ca.gov

SELLER NAME: BORREGO SOLAR SYSTEMS, INC.

SELLER CONTACT: Faris Matin

TITLE: Manager of Project Finance

SELLER TEL: (510) 496-8715

SELLER EMAIL: fmatin@borregosolar.com

PURPOSE: To establish a service contract with BORREGO SOLAR SYSTEMS, INC. for delivery of electricity.
# CITY OF MORGAN HILL

## POWER PURCHASE AGREEMENT

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CITY OF MORGAN HILL

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("PPA" or "Agreement") is dated as of August 15, 2011, ("Effective Date") and is witnessed, acknowledged, and executed by authorized representatives of Borrego Solar Systems, Inc., a California corporation ("Seller") and the City of Morgan Hill, a California municipal corporation ("Buyer" and, together with Seller, each, a "Party" and together, the "Parties"), as evidenced by their signature on the last page of this document.

RECITALS

A. Buyer wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;

B. Pursuant to an agreement with the County of Santa Clara, the County conducted a competition process on behalf of itself, the Buyer and several other municipal jurisdictions to solicit, review and select the provider of photovoltaic electric system and power. Seller submitted its bid and proposal and was selected.

C. Seller is in the business of designing, constructing and operating solar photovoltaic ("PV") electric generating systems for the purpose of selling power generated by the systems to its customers;

D. Buyer has selected Seller to design, construct, own and operate two solar PV generating systems to be located on its properties subject to the terms, conditions, covenants and provisions set forth herein;

E. Seller intends to construct, own, and operate renewable energy-powered generating facilities that shall qualify as an eligible renewable energy resource ("ERR") under the State of California Renewable Portfolio Standard ("RPS") and desires to sell electricity produced by such generating facilities together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;

F. Buyer desires to purchase electricity generated by Seller’s generating facility, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:
ARTICLE 1: DEFINITIONS

References in the Agreement to the terms or phrases below shall have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of the Agreement, the more specific provision shall control.

1.1 “Actual Monthly Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term.

1.2 “Actual Commercial Operation Date” means the date on which Commercial Operation first occurs.

1.3 “Adjusted Base Contract Price” means the Base Contract Price adjusted according to Article 7 and shall begin to apply on the first day of the first full month after the submission of the PTC analysis results to the [Buyer].

1.4 “Adjusted Delivered Energy” means the Delivered Energy from the Generating Facility

1.5 “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by such specified Person.

1.6 “Agency” means the Morgan Hill Redevelopment Agency.

1.7 “Agreement” means the power purchase agreement entered into by and between Buyer and Seller, and all exhibits, and schedules (each an “Exhibit” or “Schedule”, as applicable) attached hereto and incorporated herein.

1.8 “Annual Escalation Adjustment” means the percentage increase to be applied commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, as described in Exhibit 6 Contract Price.

1.9 “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

1.10 “Bankruptcy Event” means with respect to a Party, that either:
a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy,
insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

1.11 "Base Contract Price" means the price in $U.S. per kWh to be paid by Buyer to Seller for the purchase of the Adjusted Delivered Energy, as specified in Article 7 and Exhibit 6 Contract Price.

1.12 "Business Day" means any day other than a Saturday, Sunday, or a public holiday recognized by the City of Morgan Hill.

1.13 "Buyout Option" means Purchase Option, as defined in Article 2.

1.14 "Buyout Date" has the meaning assigned to it in Article 4.

1.15 "Buyout Payment" means the amount determined to be the Fair Market Value of the Generating Facilities, as determine by the appraisal process described in Article 4.

1.16 "Buyer Address for Payments" means the address to which invoices to the Buyer should be sent, currently:
   2310 N. 1st St.
   Suite 200 –Attention Utilities Desk
   San Jose, CA 95131

1.17 "Buyer Address for Notices" means the addresses to which notices to the Buyer should be sent as set forth in Exhibit D.

1.18 "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the PUC and implemented through Article 11.8 (commencing with Article 25780) to Division 15 of the California Public Utilities Code.

1.19 "Commercial Operation" means that: (i) a Generating Facility has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the Plans and Specifications, the specifications set forth in Exhibit 2 Description of Generating Facilities, Exhibit 4 Technical and Warranty Requirements; and Exhibit 5 Engineering & Construction Requirements and (ii) Seller has successfully completed the Commissioning Tests.
1.20 "Commissioning Tests" means the tests set forth in Exhibit 5 Engineering & Construction Requirements.

1.21 "Commencement of Work Date" means the date on which Seller begins the physical construction work at the Premises of the PV System or PV Systems which is/are the subject of this Agreement.

1.22 "Commercial Operation Date" means the date on which Commercial Operation first occurs on any of the PV Systems.

1.23 "Commercial Operation Deadline" means the date which is three hundred and sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event or breach of the Agreement by Buyer.

1.24 The price for "Commercially Available Local Electric Utility Provided Energy" means 18.3 cents per kilowatt hour with a 3% annual escalator.

1.25 "Contract AC Power Rating" means the AC power rating for the Generating Facility in a given Contract Year, as specified in Exhibit 2 and Exhibit 3.

1.26 "Contract Capacity" means the maximum instantaneous output of the Generating Facility in kilowatts measured at the Delivery Point.

1.27 "Contract Year" means each year beginning on January 1st and ending on December 31st of such year following the Actual Commercial Operation Date; provided, however, that the first Contract Year shall commence on the actual Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the actual Commercial Operation Date.

1.28 "Days" unless otherwise specified, shall mean calendar days.

1.29 "Degradation" means forecasted deterioration calculated on an annual basis of Generating Facilities due to normal wear and tear and decreasing efficiency causing reductions in power output.

1.30 "Delivered Energy" the amount of energy delivered by Seller as recorded by Seller's Meters.

1.31 "Delivery Point" means the metering point at the high side of the transformer for each Generating Facility, as specified in Exhibit 2 Description of Generating Facilities.

1.32 "Dispatch Down Period" means any period of time during which (a) the Local Electric Utility orders a curtailment that affects the Generating Facility, for reasons which do not constitute a Force Majeure, or (b) there is scheduled or unscheduled maintenance on the Transmission System that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.
1.33 "EA Agency" means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.

1.34 "Energy" means the electricity generated by each Generating Facility pursuant to this Agreement, as expressed in units of kWh.

1.35 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its displacement of conventional energy generation. Environmental Attributes including but not limited to: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights.

1.36 "Environmental Attributes Reporting Rights" means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereof.

1.37 "Environmental Laws" shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlilien or environmental clean-up statutes.

1.38 "Existing Financial Incentives" means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facilities or the Output generated by the Generating Facilities (including without limitation tax credits, accelerated depreciation, or bonus depreciation) that are in effect on the Effective Date and (ii) any other financial incentives that result from the ownership and operation of the Generating Facilities or the Output that are in effect on the Effective Date.

1.39 "Expected Annual Contract Quantity" means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 8 [Expected Contract Quantity Form]. May also be referred to as the "Estimated Annual Production" in this Agreement.
1.40 "Expected Commercial Operation Date" means the date on which the Parties expect the Generating Facilities to achieve Commercial Operation, established in the Construction Schedule submitted in accordance with Article 6.

1.41 "Fair Market Value" or "FMV" means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry would determine a photovoltaic system to have when negotiated in an arm’s-length, free market transaction between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. For the purposes of Article 4 of this Agreement, the FMV shall be determined pursuant to Article 4, Section 4.1.

1.42 "Financing Party" means, as applicable (i) any Person from whom Seller leases the Generating Facilities or (ii) any Person who has made or will make a loan to or otherwise provide capital to Seller with respect to the Generating Facilities.

1.43 "Force Majeure Event" has the meaning set forth in Article 11.

1.44 "GAAP" means Generally Accepted Accounting Principles in the United States of America that is consistently applied.

1.45 "Generating Facilities" PV Systems or "Systems" mean Seller's electricity generating facilities as more particularly described in Exhibit 2 Description of Generating Facilities, excluding the Sites, land rights, and interests in land.

1.46 "Governmental Authority" means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.

1.47 "Green Tag Reporting Rights" are the right of a Green Tag purchaser 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 at the Green Tag purchaser’s discretion, and include those Green Tag Reporting Rights accruing under Article 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. "Green Tags" are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

1.48 "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or
harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.49 "Initial Synchronization" means the date upon which the Generating Facilities are first synchronized with the Transmission System.

1.50 "Interconnection" means the interconnection of the Generating Facilities with the Transmission System, including construction, installation, operation, and maintenance of all Interconnection Facilities.

1.51 "Interconnection Agreement" means the agreement between Buyer, the Local Electric Utility, and if applicable, the ISO which sets forth the terms and conditions for Interconnection of the Generating Facilities to the Transmission System, as amended from time to time.

1.52 "Interconnection Facilities" means all of the facilities installed for the purpose of interconnecting the Generating Facilities to the Transmission System, including transformers and associated equipment, relay and switching equipment and safety equipment.

1.53 "Interest Rate" means the interest rate applicable for refunds calculated pursuant to 18 C.F.R. Article 35.19a of the FERC Regulations, as that section may be amended or superseded from time to time. The monthly interest rate shall be prorated by days from the date a payment is due until the date a payment is received.

1.54 "Investment Tax Credit" or "ITC" means the energy credit under Article 48 of the Internal Revenue Code.

1.55 "Kiosk" means the viewing station for the Buyer and the general public to view the production of electricity of the Generating Facility or Generating Facilities as defined in Article 7.1(c)(i)(1).

1.56 "kWh" means one kilowatt of electricity supplied for one hour.

1.57 [INTENTIONALLY LEFT BLANK]

1.58 "Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer at the applicable Site.

1.59 "Mechanical Completion" means when (i) installation of all necessary components and systems of the Generating Facilities has been completed; (ii) the Generating Facilities are mechanically and electrically sound; and (iii) the Generating Facilities are ready for initial operation, adjustment, and testing, and approved by the local agency having jurisdiction over the work.

1.60 "Meter" or "Meters" means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller and used to determine the quantities of Energy generated by each Generating Facility and to record other related parameters required for the reporting of data to Seller.
1.61 "Metered Energy" means the amount of Energy measured at the Meter for each Generating Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.

1.62 "Monitoring System" means physical devices, data processing equipment and apparatus associated with real-time monitoring of the quantities and quality of energy generated by each Generating Facility and complying with all requirements of Article 7. The Monitoring System shall meet or exceed PG&E monitoring and reporting standards.

1.63 "MW" means one megawatt of electric energy.

1.64 "MWh" means one megawatt of electricity supplied for one hour.

1.65 "Outage" means a physical state in which all or a portion of the Generating Facilities is unavailable to provide Energy to the Delivery Point, including any reduction in the capacity of the Generating Facilities, and including tilting the photovoltaic panels away from the configuration set forth in the most recent approved as built drawings, whether planned or unplanned.

1.66 "Output" means (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.

1.67 "Parties" means Buyer and Seller, and each such Party’s respective successors and permitted assignees.

1.68 "Party" means Buyer or Seller, and each such Party’s respective successors and permitted assignees.

1.69 "Permits" means, collectively, all federal, state or local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facilities.

1.70 "Person" means an individual, corporation, partnership, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

1.71 "PG&E" means the Pacific Gas and Electric Company.

1.72 "Preliminary Requirements" has the meaning set forth in Article 6.

1.73 "Premises" means Project Sites.

1.74 "Project" means the discretionary approvals by the City Council of the City of Morgan Hill of this Agreement and other power purchase agreements to be entered into simultaneously between the Seller and Buyer relating to the purchasing, installation and operation of all Generating Facilities at various locations in the City of Morgan Hill, including any work in altering or preparation of the Project sites, or any tree removal and grading or equipment installation.
1.75 “Project Sites” means the real property, on which the Generating Facilities are to be built and located, as described in Exhibit 2.

1.76 “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.

1.77 “PTC” means PV USA Test Conditions.

1.78 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code section 399.12(h) as may be amended from time to time or as further defined or supplemented by applicable law.

1.79 “Renewal Term” has the meaning set forth in Article 2.1.

1.80 [Intentionally left blank.]

1.81 “Requirements of Law” means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.

1.82 “Schedule” “Scheduled” or “Scheduling” means the actions of Seller, Buyer and /or their designated representatives, including each Party’s Local Electric Utility, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered for each interval on any given day on which the delivery of Energy is scheduled to occur during the Term at the Delivery Point.

1.83 “Seller” means Borrego Solar Systems, Inc., the entity that has executed this Agreement as of the date hereof. Seller shall have the meaning set forth in the preamble. For purposes of access rights and other rights necessary for Seller to perform its obligations hereunder, the term “Seller” shall include Seller’s authorized agents, contractors and subcontractors. The term “Contractor” may be used in place of the term “Seller.”


1.85 “Seller’s Project Management Team” means individuals identified by Seller as responsible for oversight and contract management of all phases of project design/build, operations, maintenance, verification and billing account management.

1.86 “Site” means Project Site.
"Solar Insolation" means the amount of solar kWh per square meter falling on a particular location.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

"Term" has the meaning set forth in Article 2.

"Terminal Value(s)" means the value or values, as applicable, set forth in Exhibit C.

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"Local Electric Utility Tariffs" means the duly authorized tariff, rules, schedules, protocols and other requirements of the Local Electric Utility, as these may be amended from time to time.

"Transmission System or Local Electric Utility Electricity Grid" means the facilities used for the distribution and transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.

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

ARTICLE 2: TERM

The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operation Date ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may renew for additional five year terms ("Renewal Terms"), if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the Initial Term. The Parties shall confer and agree on a schedule for the Price, Escalation Rate, Terminal Values, Expected Annual Contract Quantity and termination and amendment procedure for any Renewal Term. The remainder of the terms and conditions shall remain substantially the same for the Renewal Term as for the Initial Term. If Seller consents to renewal, it shall provide written notice of consent to the
renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, the Agreement shall expire as of the last day of the Initial Term. No later than sixty 60 days after Seller provides such consent, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Terminal Values, and Expected Annual Contract Quantity for such Renewal Term, Buyer shall confirm to Seller in writing of its intent to proceed with its option to renew. In the event Buyer does not provide such confirmation, the Agreement shall expire as of the last day of the Initial Term. Upon expiration of the Initial or Renewal Term, Seller shall cause the Generating Facilities to be removed from the Buyer’s premises pursuant to Article 13.5(a).

ARTICLE 3:  INTENTIONALLY LEFT BLANK

ARTICLE 4:  PURCHASE OPTION

4.1 Buyer’s Exercise of Purchase Option: So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase (the “Purchase Option”) the Generating Facilities for a purchase price (the “Buyout Price”) equal to its fair market value, (“FMV”), ninety-one (91) days after the first day of the sixth (6th) anniversary of the Commercial Operation Date of the Generating Facilities, provided, however, that the Buyout Date shall be prior to the expiration of the Initial Term or any Renewal Term. If Buyer chooses to exercise the renewal option, the following steps shall be followed by the Parties:

a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the Generating Facilities on a date certain. The date that is at least 240 days after Buyer gives Seller its written notice of intent to purchase shall be referred to as the (“Buyout Date”).

b) For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in Article 4.1 (a), the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV as of the Buyout Date. Within sixty (60) days of the selection of such appraiser, s/he shall evaluate and determine the FMV of the Generating Facilities 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 Buyer and Seller.

c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry it selects no later than sixty (60) days from the date of notice referred to in Article 4.1 (a). Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall mutually select a third nationally recognized independent, third-party appraiser with experience in the solar photovoltaic industry, whose services shall be equally paid for by the Parties. Within sixty (60) days of the selection of such third appraiser, the three appraisers shall evaluate and determine the FMV of the Generating Facilities and shall submit their reports to both Parties. The appraiser’s valuation
that diverges the greatest from each of the other two appraisers’ valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers’ valuations shall be deemed to be the FMV of the Generating Facilities. If no such valuation may be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the Generating Facilities. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.

d) No later than sixty (60) days after determination of the FMV of the Generating Facilities, Buyer shall confirm to Seller in writing of its intent to proceed with its option to purchase the Generating Facilities at the Buyout Price, which shall be the FMV, as determined pursuant to this Article 4.1. In the event Buyer does not provide such written confirmation, the provisions of the Agreement shall be applicable as if Buyer had not exercised the Purchase Option.

e) If Buyer confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the Generating Facilities to pass to Buyer on the Buyout Date, free and clear of any Liens, and (B) assign all warranties for the Generating Facilities to Buyer. Buyer shall pay the Buyout Price to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Buyer by Seller for payments under the Agreement. Upon such execution of documents and payment of the Buyout Price, as to the Generating Facilities the Agreement shall terminate automatically and Buyer shall own the Generating Facilities and all Environmental and Financial Attributes relating to the Generating Facilities. For the avoidance of doubt, payment of the Buyout Price shall be in lieu of and instead of any payments described in Article 7 accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with the Buyer to give prompt effect to this transfer.

f) All other personal property of the Seller not included in the Buyer’s purchase shall be removed by Seller from the Buyer’s premises at no cost to Buyer.

**ARTICLE 5: TERMINATION:**

In the event of termination by Buyer, except as specified otherwise in this Agreement (and specifically not including the following circumstances by way of example: (i) termination for either Party’s default (Article 13); (ii) termination for Force Majeure (Article 11); and (iii) termination for non-appropriation (Section 11.1(d)), Buyer shall pay to Seller, as liquidated damages, the applicable Terminal Value set forth in Exhibit C, and Seller shall cause the Generating Facilities to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the Generating Facilities and shall remediate and restore the Premises to the condition preceding the installation of the Generating Facilities as set forth in Section 13.5.

**ARTICLE 6: ENGINEERING AND CONSTRUCTION REQUIREMENTS**

6.1 All elements of engineering, construction and installation of the applicable Generating Facilities and compliance with all California Solar Initiative (“CSI”) requirements are Seller’s sole responsibility, provided that Buyer cooperates in good faith with Seller to satisfy the requirements of CSI and those of the Local Electric Utility.
6.2 Seller shall provide services as described herein and pursuant to Exhibit 5 – Engineering and Construction Requirements.

6.3 INTENTIONALLY LEFT BLANK.

6.4 Seller shall provide bi-weekly status reports throughout the design and engineering phase, as well as any additional briefing requested by Buyer.

6.5 Seller will create, maintain and provide to Buyer, minutes of meetings between Buyer’s representatives and Seller’s Project Management Team.

6.6 CEQA Compliance

a) Compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq., is a condition precedent to the Buyer’s obligations under this Agreement. The Seller shall not have any right to install the System or commence the Project until the Buyer has fully complied with CEQA, the statute of limitations for legal challenges of the Buyer’s decision to approve the CEQA determination has expired without legal challenge, and Buyer has issued a statement to Seller attesting to the fact that Buyer has fully complied with CEQA as it relates to all applicable Generating Facilities included in the Agreement ("CEQA Certification"). Seller understands and agrees that Buyer shall have no obligation or liability under this Agreement should Buyer exercise its discretion to not approve this Agreement or Project under CEQA, provided that Buyer may only terminate the Agreement as it relates to a specific Generating Facility if such termination occurs prior to the Commencement of Work Date of that specific Generating Facility. Buyer agrees to begin the initial study within ten (10) days after the Effective Date of this Agreement. If that analysis indicates that an exemption or negative declaration will suffice, then Buyer will proceed to complete the exemption or negative declaration in accordance with Applicable Law, and issue a CEQA Certification to Seller. Seller shall promptly reimburse Buyer for all reasonable costs for such study and completion of the necessary exemption or negative declaration, including the costs to file notices of exemption or determination, up to a not to exceed cost of $10,000 for all applicable Generating Facilities no later than thirty (30) days of Seller’s receipt of such invoice. The Parties shall promptly proceed to perform their obligations under this Agreement upon Buyer’s issuance of the NTP to Seller. If Buyer determines that the costs for such analysis and completion of exemption or negative declaration for all applicable Generating Facilities shall exceed $10,000, it shall notify Seller in advance prior to expending more than $10,000 and state in writing the additional costs Buyer reasonably expects to incur for such analysis and completion of exemption or negative declaration for all applicable Generating Facilities. Seller may, in its sole discretion, agree to pay Buyer additional sums to defray such costs. If Seller does not agree to do so within thirty (30) days of receipt of Seller’s written notification of such additional costs, then the Agreement shall terminate as to the Generating Facilities, and neither Party shall have any liability to the other Party (other than any such liabilities that have accrued prior to such termination).
b) If the Buyer, in its discretion, determines that a mitigated negative declaration ("MND") or environmental impact report ("EIR") is required to comply with CEQA, then Buyer shall promptly provide Seller with a written statement detailing the reasons that Buyer believes that MND or EIR is required to comply with CEQA and the estimated cost to comply with CEQA for the Generating Facilities. Unless Seller issues Buyer a written statement signed by an authorized representative of Seller agreeing to pay for all of the estimated cost to comply with CEQA within thirty (30) days of receipt of Buyer’s written statement, then the Agreement shall terminate as to the Generating Facilities, and neither Party shall have any liability to the other Party (other than any such liabilities that have accrued prior to such termination).

6.7 Engineering - Design Phase

During this phase, Seller shall proceed with all activities necessary to allow commencement of the construction phase, including completing the "Preliminary Requirements" (as set forth below). Upon completion of this phase, Seller shall proceed with the installation & construction phase.

a) Preliminary Requirements:

(i) Prior to the execution of this Agreement, the Seller must comply with the Insurance Requirements for design phase included as Exhibit 10. Seller shall maintain such coverage throughout this phase.

(ii) Seller must comply with all requirements set forth in Exhibit 5 [Engineering & Construction Requirements] and Buyer’s design review process.

(iii) Within sixty (60) days of the Effective Date:

1. Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. Such Expected Commercial Operation Date shall be no later than the CSI Reservation Expiration Date which is currently June 21, 2012 or any extensions thereof.

2. Each Party, upon request, shall furnish current certificates evidencing that the insurance coverage required under this Agreement is being maintained.

(iv) Within one hundred and twenty (120) days from the Effective Date:

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

(v) One hundred and twenty (120) days prior to CSI Reservation Expiration Date deadline for the Generating Facilities:
1. Seller must have applied for and obtained a building permit for the Generating Facilities.

2. Seller shall have paid to Buyer $150 for each tree that is to be removed in the construction of the photovoltaic system.

(vi) Concurrently with the submission of the application of the building permit, Seller must have an approved Construction Schedule pursuant to Article 6.8 (d) and commence construction.

(vii) Seller must have obtained approval from the Buyer, which shall not be unreasonably withheld, conditioned or delayed of the final 100% detailed engineering drawings and specifications for the Generating Facilities which shall comply with all applicable building codes ("Plans and Specifications"). Seller must submit 65% and final 100% detailed engineering drawings and specifications for the Generating Facilities to Buyer for approval no later than ninety (90) days and one hundred and fifty (150) days, respectively from the Effective Date. Buyer shall be deemed to have approved such plans and specifications if Buyer fails to transmit notice of disapproval within thirty (30) calendar days from the date that Seller delivers the plans and specifications to Buyer.

(viii) Prior to the CSI Reservation Expiration Date, Seller must have obtained from the Local Electric Utility a Permission to Operate Letter, an Interconnection Agreement and initiated operation of each Generating Facilities

6.8 Construction Phase:

a) Buyer will issue a “notice-to-proceed” to begin construction (Buyer’s NTP”) once the Preliminary Requirements have been satisfied, design review has been completed, CEQA has been completed, and Plans and Specifications have been approved.

b) Seller will cause the Facilities to be designed, engineered, installed and constructed in accordance with Exhibit 5 of this Agreement, the Plans and Specifications and Applicable Law, including but not limited to, the payment of prevailing wages, if applicable. All construction of Generating Facilities, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of the photovoltaic systems, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Buyer shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Seller is adhering to the Plans and Specifications and Exhibit 5 to the Agreement.
3. Unprotected steel shall not to be used in any components.

4. Seller shall obtain electrical PE stamp verifying the integrity and code compliance of proposed PV systems and interconnection with facilities.

(iv) All conductors shall be per NEC Code and per all applicable building and electrical codes.

(v) All penetrations flashed and sealed by a certified roofer and maintain current warranty.

(vi) Array layout shall be designed to provide walking access around the perimeter of the roof and convenient access to existing roof mounted HVAC equipment.

(vii) Parking canopy systems shall be designed to include code complaint safety lighting, and maintain existing code complaint safety lighting of parking lots prior to elevated support structures being installed which shall be ten (10) feet clear, or to applicable height requirements as specified by site.

(viii) A Monitoring System shall be included for each Generating Facility.

6.9 Parties’ Rights to Terminate Prior to Commercial Operation

a) Buyer’s Rights to Terminate:

(i) Buyer shall have the right to terminate this Agreement without liability at any time prior to the issuance of the Buyer’s NTP.

(ii) Furthermore, if Seller fails to complete the Preliminary Requirements in conformance with Article 6.7, Buyer may terminate this Agreement without penalty, liability or expense of any kind to Buyer by providing to Seller a written notice of termination after the deadline for completion of the preliminary requirements; provided, however that any such written notice of termination for non-compliance with Article 6.7, sections (a)(i) – (a)(vii) shall be provided by Buyer to Seller prior to the Commencement of Work Date and any written notice of termination for non-compliance with Article 6.7 section (a)(viii) may be provided by Buyer after the Commencement of Work Date but prior to the Commercial Operation Deadline, if at all. The Buyer may extend deadlines at its option. If Buyer elects to terminate pursuant to this paragraph, Seller shall take all actions necessary to return the Buyer’s premises to the condition Seller first encountered them, at no cost to the Buyer.

(iii) If Seller fails to achieve Commercial Operation by the Commercial Operation Deadline, for any reason other than as a result of a Force Majeure Event, Buyer may terminate this Agreement, if at all, without penalty, liability or expense of any kind to Seller by providing to Seller a written notice of
termination within thirty (30) days after the Commercial Operation Deadline. The Buyer may extend the Commercial Operation Deadline at its option.

b) **Seller’s Rights to Terminate:** In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (at its sole discretion) terminate the Agreement, subject to Articles 6.9(c) - (e), in which case neither Party shall have any liability to the other Party:

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

(ii) There exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the Generating Facilities or would adversely affect the electricity production from the Generating Facilities as designed.

(iii) Financial incentives related to the California Solar Initiative (CSI) or federal Investment Tax Credit (ITC) change in such a way that could reasonably be expected to adversely affect the economies of the installation for Seller and its investors, including the Financing Parties.

(iv) Within 120 days of the Effective Date, Seller is unable, after making best efforts, to obtain financing for the Generating Facilities on terms and conditions satisfactory to it.

(v) Seller has not received a fully executed (i) Grant of Access Right (Exhibit A), and (ii) a release or acknowledgement from any mortgagee of the Premises, if required by Seller’s Financing Party, to establish the priority of its security interest in the Generating Facilities.

(vi) Seller has reasonably determined that there has been a material adverse change in the rights of the Buyer to occupy the premises or the Seller to construct the Generating Facilities on the Premises.

(vii) Seller, after making best efforts to do so, has not received evidence that interconnection services will be available with respect to energy generated by the Generating Facilities.

(viii) Seller has reasonably determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the Generating Facilities.

(ix) Seller, after making all best efforts, has not received all required environmental approvals or permits from applicable Governmental Authorities in a manner timely enough to allow Seller to begin construction and satisfy the Commercial Operation Deadline.

c) **Remediation:** If Seller wishes to exercise its termination rights listed in section 6.9(b), Seller shall take all actions necessary to return the Buyer’s Premises where the Generating Facilities was to be installed to the condition the Seller first encountered it in or a condition as reasonably agreed upon by the Seller and Buyer.

d) **Seller’s Project Documents:** If Seller exercises its rights under section 6.9(b) for any Generating Facility, Seller shall provide to Buyer all calculations, documents, plans and reports related to the planning and installation of the Generating
Facilities provided that Buyer shall indemnify and hold harmless Seller for any and all claims based on any person’s use, consultation, or reliance on such calculations, documents, plans and reports related to the planning and installation of the Generating Facilities.

e) **Buyer Option to Cure:** Notwithstanding anything to the contrary, if Seller determines that it wishes to exercise termination pursuant to section 6.9(b), Seller shall give written notice to Buyer within 15 days of such determination. Upon receiving such notice, Buyer shall have 45 days to provide a cure for the circumstance causing Seller to consider termination. The Seller shall not exercise its rights under section 6.9(b) until it has provided a written notice to the Buyer of its intent to do so and allowed the Buyer 45 days to attempt to cure. The Buyer shall have the option, but not the obligation, to cure.

**ARTICLE 7: DELIVERY OF POWER, METERING & MONITORING**

7.1 **Purchase & Sale**

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

- Adjusted Delivered Energy multiplied by Base Contract Price as per Exhibit 6 (Contract Price).

- Seller shall only Schedule and deliver Energy and Environmental Attributes from the Generating Facilities.

The Output represents a package of services and benefits including reduction in the Buyer’s peak demand from the Local Electric Utility.

b) **Annual Escalation Adjustment.** Commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, the applicable Contract Price shall be escalated to reflect the Annual Escalation Adjustment as set forth in Exhibit 6 (Contract Price).

c) **Meters**

(i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller’s sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric Utility Tariffs and the Buyer-PG&E Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least every two (2) years. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer
to be present at such tests and to receive the results of such tests. Metering
must have an equivalent accuracy of +/- 2% or better and monitoring results
from Seller’s Performance Monitoring and Reporting Service (PMRS) that is
viewable by Buyer at all times. Eligible meters and PMRS providers must be
listed as approved on the Go Solar California website.

1. Single Viewing Kiosk For Generating Facilities: At location of
Buyer’s choice, Seller will install a single kiosk for viewing by the
genereal public consisting of a 20”LCD screen with a computer and
keyboard sufficient to view the data acquisition system (“DAS”)
monitoring of the Generating Facilities. The computer and keyboard
shall be housed in a cabinet whose design, aesthetics, and cost are
mutually agreed upon by Buyer and Seller. Buyer will allow Seller to
use a 120v electrical outlet and data outlet located at the mutually
agreed upon location which will be within a reasonable distance of an
existing 120v electrical outlet. The total installed cost of the kiosk
consisting shall not exceed $5,000 US dollars. If the cost exceeds
$5,000 as a result of Buyer’s specific request, Buyer shall be
responsible for any cost over the $5,000.

(ii) Meter Reading and Communications Equipment. After Initial
Synchronization, Seller shall, at its sole cost and expense, read, or cause to be
read, the Meters at least as frequently as is needed and at least at the end of
each calendar month during the Term. Seller shall install, own and maintain,
at its sole cost and expense, communications equipment and services
necessary to allow remote reading of the Meters pursuant to the requirements
of the Meter Service Agreement for ISO Metered Entities, whether or not the
Generating Facilities are an ISO Metered Entity. Seller shall apply
verification, editing and estimation techniques to ensure that the meter data
accurately represent actual Output and are in compliance with all applicable
requirements of (i) the Local Electric Utility; and (iii) the Buyer-PG&E
Interconnection Agreement.

(iii) Seller shall at its sole cost and expense, install any updates or upgrades to the
Meters, and all associated measuring equipment necessary to permit an
accurate determination of the quantities of Energy delivered under this
Agreement. Seller shall permit the Buyer or Buyer’s representative access to
its Generating Facilities for the purpose of verifying meters.

(iv) Local Electric Utility and PG&E Requirements. If and to the extent requested
to do so by Buyer, Seller shall submit to the Local Electric Utility and/or
PG&E, or allow the Local Electric Utility and/or PG&E to retrieve, any
meter data required by the Local Electric Utility and/or PG&E related to each
Generating Facility and associated with the provision of transmission or
distribution for the Output of each Generating Facility in accordance with the
Local Electric Utility Tariffs, and the Buyer PG&E Interconnection
Agreement.
d) Delivery Obligations.

Beginning on the Commercial Operation Date for each Generating Facilities, such Facility shall produce not less than 85% of the applicable Expected Annual Contract Quantity for each such Facility (after accounting for weather-related and seasonal changes) as of the Effective Date during the Initial Term, measured on a rolling, two (2)-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity is due to (a) Facility failure, damage or downtime attributable to third parties, (b) resulting from general utility outages or any failure of any electric grid, (c) a Force Majeure Event or (d) acts or omissions of Buyer of any of its obligations hereunder, provided Buyer has received prior written notice from Seller of such acts or omissions. Subject to the terms and conditions of this Agreement, if as of any anniversary of the Commercial Operation Date of the Generating Facilities beginning on the second anniversary of such date, the actual output of such Generating Facility for the prior two (2) years (the “Actual System Output”) does not equal or exceed the Expected Annual Contract Quantity for such two (2)-year period for any Facility, in its next invoice Seller shall credit Buyer an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for Commercially Available Local Electric Utility-provided energy in the applicable market during such two (2)-year period minus the applicable PPA Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such two (2)-year period and the Expected Annual Contract Quantity for such two (2)-year period. Provided that Seller credits Buyer pursuant to the procedure set forth in Section 7.1(d) of this Agreement, in the event that the Actual System Output does not equal or exceed the Expected Annual Contract Quantity and provided such Actual System Output equals at least fifty percent (50%) of such Expected Annual Contract Quantity, such cured shortfall shall not constitute a Seller Default nor shall such cured shortfall give rise to any other remedies in connection therewith.

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

f) Possibility of Wheeling Energy Credits. To the extent that the California Public Utilities Commission (“CPUC”) and California laws and regulations permit Host to “wheel” energy between one city facility and a separate metered city facility, Seller shall cooperate with and support Buyer’s efforts to do so.

7.2 Monitoring System and Web Interface

a) Seller shall install, maintain, own, and operate a Monitoring System for each Generating Facility.

b) The Monitoring System shall include, without limitation, ability to monitor Revenue grade AC production data; weather data, (including ambient temperature and wind speed); and shall include a pyranometer.
c) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, greenhouse gas emissions reduced, peak AC efficiency, peak DC efficiency, and total percent of energy used from system.

d) Additional requirements and specifications for monitoring is described in Exhibit 7 (Operations Forecasts, Scheduling Protocols, & Monitoring).

7.3 AC Power Rating Adjustment

a) Seller shall ensure that each Generating Facility meets the Contract AC Power Rating. Within six months of the actual Commercial Operation Date, Seller shall perform and submit to Buyer the results of a PTC Rating analysis which shall consist of the following: performing Field Verification testing as defined in CSI Handbook Section 7. Results of testing shall be provided to Buyer. The failure of this PTC Rating analysis to demonstrate that each Generating Facility has an AC power rating of at least ninety (90) percent of the Contract AC Power Rating based on objective criteria mutually agreed upon by the Parties prior to the commencement of construction, shall result in Seller taking actions to remedy such AC power rating. If the analysis demonstrates that an Generating Facilities has an AC power rating of less than ninety-five (95) percent of the Contract AC Power Rating, then the Base Contract Price shall be adjusted as follows:

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

Where:

\(A\) = the actual AC power rating (as demonstrated by the PTC rating analysis).
\(B\) = the Contract AC Power Rating
\(C\) = the Base Contract Price
\(D\) = the Adjusted Base Contract Price

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

b) Annual Analysis. At least once in every twelve (12) months beginning 30 days after the Actual Commercial Date, other than the first Contract Year, Seller shall perform and submit to the Buyer the results of a PTC Rating analysis to be performed in the same manner as detailed in Article 7.3(a). Results of this testing, along with comparison of metered production and expected production for the period since previous testing, shall be provided to Buyer.

c) Insolation. To the extent that (1) Buyer’s actions or failure to honor its obligations under this Agreement or the Right of Access result in a reduction of the Insolation available to the Generating Facilities, and (2) this reduction in turn causes the
actual AC power rating of the Generating Facility to be less than 90% of the Contract AC Power Rating, then the reductions in the Contract Price set forth in Articles (a) and (b) shall not apply. For purposes of this Article, "Insolation" shall mean Solar Insolation as defined in Article 1.

7.4 Delivery Point

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

7.5 Environmental Attributes

a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, titles and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller’s production or acquisition of the Environmental Attributes. Seller agrees that the Base Contract Price, as applicable is the full compensation for all Environmental Attributes.

b) Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes to any Person other than Buyer.

c) During the Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to the Buyer belong to anyone other than the Buyer, and the Buyer may report under any program that such attributes purchased hereunder belong to it.

d) Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Buyer an attestation of Environmental Attributes produced by the Generating Facilities and purchased by Buyer in the preceding calendar month. On or before the Commencement Anniversary of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to the Buyer an attestation of Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 9 [Form of Attestation]. Exhibit 9 [Form of Attestation] may be updated or changed by Buyer as necessary to ensure that the Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
e) Documentation. At Buyer's option, the Parties, each at their own expense, shall execute all such documents and instruments in order to affect the transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

7.6 Tax Credits and Financial Incentives

a) In connection with Seller's rights and interests in performance based incentive payments to be made under the California Solar Initiative after the Commercial Operation Date, Buyer agrees to cooperate with Seller, including signing authorizations needed by Seller, to obtain or transfer any such performance based incentives under the California Solar Initiative.

ARTICLE 8: BILLING AND PAYMENT

8.1 Billing and Payment

a) Generally. During the Term, on a monthly basis, Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer during the prior month, in accordance with Article 7. Such payment shall be full compensation to Seller for the Adjusted Delivered Energy received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form acceptable to the Buyer, and must include a unique invoice number. All amounts paid by Buyer to Seller shall be subject to audit by the Buyer.

b) Payment. All payments shall be made on or before thirty (30) days after receipt of an undisputed invoice. Each Party shall make payments by electronic funds transfer or by other mutually agreeable method(s), to the account designated by the other Party.

c) Buyer shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Seller. All undisputed payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

8.2 Allocation of Taxes and Possessory Interest Tax

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

c) **Buyer Credit for Payment of Taxes.** If the Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, the Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

**ARTICLE 9: REMOVAL OF GENERATING FACILITIES**

9.1 **Security for Removal of Generating Facilities.** No later than five hundred and forty-five (545) days prior to the expiration of the Term for the Generating Facilities, Seller shall provide Buyer a written estimate of the cost to remove the Generating Facilities and restore the applicable Site to its condition prior to the installation of the Generating Facilities or to a condition agreed upon by Seller and Buyer. The Parties shall meet and confer within thirty (30) days after such written estimate is received by Buyer to resolve any concerns regarding such estimated cost. Seller shall provide one of the following forms of security for the cost to remove the Generating Facilities and restore the applicable Site to its condition prior to the installation of the Generating Facilities or to a condition agreed upon by Seller and Buyer: (i) a performance bond covering such cost, (ii) an investment or deposit account established with a financial institution reasonably satisfactory to Buyer, such approval of selection of financial institution not to unreasonably withheld, denied, conditioned, or delayed, requiring the signatures of both Buyer and Seller for all withdrawals, or (iii) a guaranty or letter of credit issued by a financial institution reasonably satisfactory to Buyer, such approval of selection of financial institution not to unreasonably withheld, denied, conditioned, or delayed, no later than three hundred and sixty-five (365) days prior to the end of the Term. Such security shall secure the costs to remove the Generating Facilities and restore the applicable Site. For avoidance of doubt, any funds remaining after the removal of the Generating Facilities and restoration of the applicable Site to its condition prior to the installation of the Generating Facilities are the sole property of Seller, and Seller, in its sole discretion, shall determine which form of security to post to secure the cost to remove the Generating Facilities and restore the applicable Site Generating Facilities. In the event of a Seller Bankruptcy Event, Buyer shall have the right to use the applicable security and funds for the sole purpose of removal of the Generating Facilities and restoration of the applicable Site Generating Facilities; any remaining funds shall remain the property of the Seller or the Seller's Financing Parties, as applicable.
ARTICLE 10: SELLER’S ADDITIONAL OBLIGATIONS

10.1 Seller shall reimburse the Buyer for Buyer’s payment of the California Solar Initiative rebate reservation fee within 30 days of receipt of the Buyer’s invoice for such payment. In addition, Seller shall apply for any rebates from the State of California, PG&E or other electricity provider on behalf of the Buyer.

10.2 INTENTIONALLY LEFT BLANK.

10.3 Seller shall provide Buyer with an as-built plan set after project completion.

10.4 Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the Technical Requirements appended as Exhibit 4 (Technical and Warranty Requirements), License, all Requirements of Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 4 (Technical and Warranty Requirements) for the equipment detailed in that Exhibit. Seller shall (a) keep the Generation Facilities in good repair and working order and (b) clean and maintain all visible structures and surfaces of the Generating Facilities (including ancillary structures or components strictly related to the Generating Facilities) so that they are free of defacement, damage, or graffiti, and such structures or components are regularly repainted and resurfaced as necessary to prevent material fading or a material incompatibility with adjacent city facilities (c) provide Buyer with a Seller contact for repair and maintenance concerns and (d) shall complete or provided for all repairs and cleaning within [twenty-four (24) hours] of notification by the Buyer unless a longer repair and cleaning period is approved by the Buyer, which approval shall not be unreasonably denied. The Parties acknowledge and agree that Buyer shall be responsible for all cleaning and graffiti removal services, and Buyer shall provide documentary evidence of all cleaning and graffiti removal services it performs on the System. Furthermore, if Seller fails to complete any repair or cleaning within twenty-four (24) hours of notification by Buyer, Buyer shall have the option of abating, cleaning and repairing the condition without notification to Seller, in which case, Seller shall pay Buyer $50 per hour for all all cleaning, repair or graffiti removal services it performs on the System up to a not-to-exceed total of 24 hours in any 365 day period. Buyer's efforts to step in to make the repairs or cleaning as set forth in this section or failure to do so shall not constitute a waiver of Seller’s future maintenance and repair obligations outlined herein.

10.5 Seller agrees it shall pay prevailing wages in connection with the construction and operation of the Generation Facilities.

10.6 Milestones

   a) Generally.

   Seller shall diligently pursue all milestones established pursuant to Article 6.7 and 6.8 and the dates set forth in the Construction Schedule and the Expected Commercial Operation Date ("Milestones"). The Parties agree that time is of the essence in connection with the completion of the Generating Facilities, and that
Milestones for the development, financing and construction of the Generating Facilities must be achieved in a timely fashion. Seller shall strive to achieve the Milestones mutually agreed to at the time of PPA execution by the Seller and Buyer.

b) Weekly Reports.

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

c) Notice of Failure to Achieve a Milestone.

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

d) Facility Mechanical Completion Inspection.

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

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

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

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

10.8 Maintenance, Audit and Inspection of Records

a) Maintenance of Records. Seller shall maintain any and all documents and records
which demonstrate performance under this Agreement and the lease, and all
ledgers, books of account, invoices, vouchers, cancelled checks, and other
documents evidencing or relating to charges for services, or expenditures and
disbursements charged to Buyer for a minimum period of five (5) years, or for any
longer period required by law, from the date of final payment to Seller pursuant to
this Agreement.

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

10.9 Insurance:

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

10.10 Commissioning Tests:

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

**10.11 Obligation to Interconnect:**

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

**10.12 WREGIS**

As applicable, prior to the Commercial Operation Dates of the applicable Generating Facilities, Seller shall register the applicable Generating Facilities in the WREGIS, and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Generating Facilities are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer as applicable. In the event that WREGIS is not in operation as of the actual Commercial Operation Date, Seller shall perform its obligations, as required under this Article as soon as WREGIS is in operation.

**10.13 Facility Conformance to Buyer Specifications.** Seller shall assure that each Generating Facility remains in conformance with the most recent version of the as-built drawings approved by the Buyer; all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Generating Facility and the most recent version of the as-built drawings approved by the Buyer, or any specification or requirement of this Agreement. Within twenty (20) Days of Buyer’s notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer which consent shall not be unreasonably withheld or delayed. If Seller fails to correct or address issue(s) identified by Buyer, Buyer shall have the right to receive a Delay Correction payment from Seller. Delay Correction Payments shall be 75% of the Contract Price multiplied by the expected Contract Quantity per day, beginning twenty one (21) Days after receipt of notification or ten (10) Days after the agreed upon date for resolution, whichever is later, and continuing for each day that the non-conformance remains uncorrected. Any such Delay Correction Payments shall be in addition to all other rights and remedies available to Buyer under this Agreement, in law or in equity.

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

10.15 Coordination with the ISO, Local Electric Utility and Western Electricity Coordinating Council ("WECC")

a) ISO, Local Electric Utility and WECC Standards. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the ISO and Local Electric Utility; (ii) WECC scheduling practices; and (iii) Prudent Utility Practices.

b) Start-ups and Shut-downs. Seller shall coordinate all Generating Facilities start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit 7 (Operations Forecasts, Scheduling Protocols, & Monitoring) and applicable requirements of the ISO Tariff.

10.16 Seller shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Generating Facilities otherwise would be able to produce Energy. Planned Outages shall be limited to no more than five (5) calendar days per Contract Year. Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling, including, if applicable, those posted on the ISO's website. Planned and forced Outages shall be coordinated between Seller and the Buyer in accordance with Exhibit 7 (Operations Forecasts, Scheduling Protocols, & Monitoring).

10.17 Transmission and Distribution Maintenance Information: If either Party receives information through the ISO or from the Local Electric Utility regarding maintenance that will directly affect the Generating Facilities, it will provide this information promptly to the other Party.

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

After the Commencement Operation Dates of the applicable Generating Facilities, Seller shall have no right to change, replace or alter the applicable Generating Facilities nor attach fixtures or erect additions or structures in or upon the applicable Generating Facilities (collectively "Alterations") without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. To the extent any change, replacement or alteration consists solely of modification or replacement of like-kind equipment it shall not be deemed to be an Alteration. Buyer shall not unreasonably delay or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the

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Alterations, Buyer may impose reasonable requirements, including the reimbursement of any costs incurred by Buyer in responding to Seller’s request or inspecting such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller’s routine repair, replacement, or maintenance of the equipment components of the Generating Facilities shall not require Buyer’s consent, but shall require sufficient advance notice to Buyer.

ARTICLE 11: FORCE MAJEURE

11.1 Force Majeure Events

a) Excuse. Subject to Article 11.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

(i) Such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;

(ii) Such Force Majeure Event is caused by factors beyond that Party’s reasonable control; and

(iii) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

b) “Force Majeure Event” may include, subject to this Article:

(i) acts of Nature such as storms, floods, lightning and earthquakes;

(ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(iii) Utility Transmission System outage or failure not caused by Seller or Seller activities;

(iv) war, riot, acts of a public enemy or other civil disturbance;

(v) strike, walkout, lockout or other significant labor dispute;
(vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves; and

(vii) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a “Force Majeure” under the ISO Tariff.

(viii) events listed in (i) through (vii), rendering Buyer unable to operate its premises using the Output of the Generating Facilities.

c) Exclusion. “Force Majeure Event” does not include the following:

(i) economic hardship of either Party except pursuant to 11.1(d);

(ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Article 11.1;

(iii) failure or delay in the granting of Permits;

(iv) failures or delays by the Local Electric Utility or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;

(v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a “Force Majeure” under the ISO Tariff; or

(vi) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event

(d) Notwithstanding anything to the contrary, due to the constitutional limitations on Buyer, a Force Majeure event shall include a "budget non-appropriation event" in which the Buyer’s appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Buyer. During the continuation of a budget non-appropriation event as defined above, if the Buyer does not otherwise have other funds available to make payments otherwise due on this Agreement, the Buyer shall not be obligated to pay for (and the Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Buyer agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Buyer) may terminate this Agreement.

11.2 Conditions

a) In addition to the conditions set forth in Article 11.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

(i) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the

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performance of its obligations under this Agreement;

(ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;

(iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;

(iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and

(v) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

11.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force Majeure event, the other Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice after the Force Majeure Event. In the event that a Generating Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and the Agreement as it relates to that Generating Facility is thereby terminated, Seller shall be responsible for removing the Generators Facilities and restoring the Premises where the Generating Facilities was installed to its pre-installation condition within ninety (90) days after provision of written notice. Seller agrees to work in good faith to keep Buyer informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in a Generating Facility being unable to function for a period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Buyer with a plan to restore the Generating Facility.

ARTICLE 12: DISPUTE RESOLUTION

12.1 The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party. Except to the extent that the Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under the Agreement. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator whom they choose together.
12.2 Notwithstanding anything to this contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy.

ARTICLE 13: DEFAULT & REMEDIES

13.1 Events of Default Generally.

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

a) Seller Schedules and/or delivers to Buyer, without Buyer’s consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement (Seller default); or

b) If any Generating Facility does not provide 50% of the Estimated Annual Production as specified for that Facility as set forth in Exhibit 8 for two (2) consecutive years after adjustments for weather, acts and omissions of third parties issues out of Seller’s control, and Force Majeure Events (Seller default)

c) INTENTIONALLY LEFT BLANK

d) Seller sells or transfers Output to any Person other than Buyer (Seller default); or

e) Either Party shall have failed to maintain any insurance required pursuant to this Agreement (Seller or Buyer default depending on circumstances); or

f) Seller shall have failed to achieve Commercial Operation by the Expected Commercial Operation Date as such deadline is established pursuant to Article 6 (Seller default); or

g) Seller shall have failed to maintain continuous operations at any Project Site for any three hundred and sixty-five (365) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Project Site (Seller default); or

h) A court shall have made or entered any decree or order: (i) adjudging a Party to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of such Party or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of such Party in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of such Party and such decree or order shall have continued for a period of sixty (60) days; or (v) such Party shall have voluntarily submitted to or filed a petition seeking any such decree or order (Seller or Buyer default depending on circumstances); or

i) The sequestration or attachment of or execution or other levy on a Party's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and such Party shall have failed to obtain a return or release of such
property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs (Seller or Buyer default depending on circumstances); or

j) The occurrence of any act or omission on the part of a Party which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for a Party to lawfully conduct the operations which a Party is required or permitted to conduct on the Premises or on the Site (Seller or Buyer default depending on circumstances); or

k) Any lien shall be filed against the Premises or against one or more of the Generating Facilities because of any act or omission of a Party, and shall not be discharged or contested by such Party in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by the other Party (Seller or Buyer default depending on circumstances); or

13.2 Seller Defaults and Buyer Remedies:

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

(i) A Bankruptcy Event shall have occurred with respect to Seller;

(ii) Seller fails to pay Buyer any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount; and

(iii) Seller breaches any material term of the Agreement, (including, where applicable to Seller, the circumstances listed in Article 10.1), and (A) if such breach can be cured within thirty (30) days after Buyer’s written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) **Buyer’s Remedies.** If a Seller Default described in this Article 13 has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to each Financing Party – which Seller shall have the obligation to provide to Buyer - and such Seller Default has not been cured within thirty (30) days of delivery of such notice or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Buyer within such thirty (30) day period if a longer cure period is needed. Any Financing Party shall be an intended third-party beneficiary of this Article 13. Upon Buyer’s exercise of termination rights pursuant to this subsection, Buyer may, at its option, provide written notice to Seller to remove one or more Generating Facilities from the Premises of the Buyer. If Buyer makes such election, Seller shall be responsible for removing the Generating Facilities at its own cost and restoring the site where
the Generating Facilities was installed to its pre-installation condition, within 90
days of provision of written notice.

(c) **No Early Termination Fee.** Article 5 of the Agreement shall not apply to any
termination of the Agreement by Buyer pursuant to this Article 13.

### 13.3 Buyer Defaults and Seller Remedies

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

(i) A Bankruptcy Event shall have occurred with respect to Buyer;

(ii) Buyer fails to pay Seller any undisputed amount owed under the
Agreement within sixty (60) days after receipt of notice from Seller of such past due amount,
which Seller shall send to Buyer 45 days after amount is due; and

(iii) Buyer breaches any material term of the Agreement, (including
where applicable to Buyer, the circumstances listed in Article 13.1), if (A) such breach can be
cured within thirty (30) days after Seller’s notice of such breach and Buyer fails to so cure, or (B)
Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure
period is needed.

(b) **Seller’s Remedies.** If a Buyer Default described in Article 13 has occurred
and is continuing, in addition to all rights and remedies provided at law or in equity, and all the
rights and remedies expressly provided to Seller pursuant to this Agreement, and subject to
Article 11, Seller may terminate the Agreement.

### 13.4 Limitation of Liabilities

(a) Except as otherwise specifically and expressly provided in this Agreement,
neither Party shall be liable to the other Party under this Agreement for any indirect, special or
consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost
of capital or claims of its customers or members to which service is made.

(b) Under no circumstances shall the non-defaulting Party be required to make
a termination payment or any other payment to the defaulting Party (except for payments due
under this Agreement for performance prior to termination).

### 13.5 Effect of Termination - Survival of Obligations

(a) **Removal and Restoration.** Unless the Parties otherwise mutually agree in
writing, upon expiration of any Initial or Renewal Terms, or upon termination of the Agreement as
to the Generating Facilities for any reason other than the exercise of Buyer’s purchase option
pursuant to Article 4, Seller shall disconnect and remove the Generating Facilities from the
Buyer’s premises and shall remediate and restore the Buyer’s premises to the condition preceding
the installation of the Generating Facility or to a condition agreed upon by the Buyer and Seller at
no cost to the Buyer. Within one hundred eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the Generating Facilities and shall remediate and restore the Premises to the condition preceding the installation of the Generating Facilities. If the Generating Facility is located on Buyer’s roof, Seller shall ensure that its removal shall not affect the integrity of the roof, including, without limitation, its leak proof capacity (other than ordinary wear and tear). Upon removal of the Generating Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer.

(b) The following sections shall survive termination or expiration of this Agreement:

(i) Obligations to pay by either Party that have accrued prior to termination or expiration

(ii) Indemnification obligations

(iii) Limitation of liability provisions

(iv) Obligations to remove Generating Facilities and remediate premises

(v) Obligations (if any) to repair damage caused by either Party

(vi) Obligations to retain records and provide access to same

(vii) Restriction regarding use of Buyer’s name for commercial purposes

(viii) This provision, Article 13.5.

13.6 Indemnification and Assumption of Risk

(a) Up to and including the Commercial Operation Date and to the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer, its agents and consultants, Engineer, and Construction Manager (individually, “Indemnitee,” and collectively the “Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing this Agreement, designing and constructing the Generating Facilities under this Agreement or its failure to comply with any of its obligations under this Agreement, except such Liability caused solely by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Buyer shall timely notify Seller upon receipt of any third-party claim relating to the Contract.

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

(c) Seller shall have no liability for breach of any environmental laws or the presence of any hazardous materials, located in, on, under or about the Premises, if any, and Buyer agrees to assume full responsibility for (and agrees to protect, indemnify, defend and hold harmless Seller from and against) any liabilities, losses, damages, penalties and expenses (including attorneys’ fees, expert fees, or court costs), as well as cleanup obligations for any environmental claims or liabilities to the extent caused by Buyer, except to the extent caused by Seller, its employees, contractors or subcontractors or to the extent discharged or released by the Seller its employees, contractors or subcontractors or to the extent that the Seller its employees, contractors or subcontractors failed to notify Buyer of the presence or release of hazardous materials discovered or known to them. Seller agrees to assume full responsibility for (and agrees to protect, indemnify, defend and hold harmless Purchaser from and against) any liabilities, losses, damages, penalties and expenses (including attorneys’ fees, expert fees, or court costs), as well as cleanup obligations for any environmental claims or liabilities to the extent caused by Seller, its employees, contractors or subcontractors, discharged or released by the Seller its employees, contractors or subcontractors, or the failure of the Seller its employees, contractors or subcontractors to notify Buyer of the presence or release of hazardous materials discovered or known to them.

13.7 Seller’s Financing Parties’ Right to Operate in the Event of Seller’s Default

If (i) Seller fails to achieve (A) the Commercial Operation Date set forth in the Milestones, or (B) a revised estimated Commercial Operation Date that has received written approval by the Buyer, or (ii) an Event of Default under Article 13 occurs, then the Seller’s Financing Parties or their designee may, but shall not be obligated to, step-in and assume operational control from Seller of each Generating Facilities, if any. The Seller’s Financing Parties, their employees, contractors and designees shall have the same rights of access to the Generating Facilities as the Seller to to operate the Generating Facility. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to the Financing Parties as a result of the Financing Parties’ operation of, or election not to operate, the Generating Facilities, if any.

ARTICLE 14: REPRESENTATIONS, WARRANTIES AND COVENANTS

14.1 SELLER’S REPRESENTATIONS, WARRANTIES AND COVENANTS

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

a) Seller is duly organized and validly existing as a Delaware limited liability company, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;

c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller’s ability to perform its obligations under this Agreement;

e) Seller will deliver to Buyer at the Delivery Point the Adjusted Delivered Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.

f) Prior to conveyance to Buyer, Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and

g) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

14.2 Seller’s Additional Representations, Warranties and Covenants

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

b) Seller represents, warrants and covenants that any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Seller gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided
shall supplement, and shall not limit or reduce, any rights afforded to Buyer by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

c) Seller expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the Buyer, in compliance with all applicable federal, state and local laws and regulations.

d) Seller warrants that all services shall strictly conform to Buyer’s requirements.

e) During the provision of goods and services, Seller may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Seller’s standard warranties or other rights and warranties that the Buyer may have or obtain.

f) Seller covenants to maintain and repair Project Sites if such maintenance and repairs are necessary as a result of Sellers’ authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

14.3 Buyer Representations and Warrants

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

a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part; and

b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law
or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer’s ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller’s obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller’s obligation to cause the Generating Facilities to be installed and operated in accordance with all Requirements of Law; and

d) Buyer has a lawful fee simple interest in the Premises (as defined in this Agreement) and no person holds a deed of trust, mortgage, pledge, lien, charge, encumbrance, claim or other interest in the Premises (i) which prohibits Purchaser from granting to Seller, Seller’s interest in the Premises as set forth in this Agreement, (ii) the foreclosure of which would terminate or impair Seller’s interest in the Premises, (iii) prohibit, restrict, or otherwise condition the construction or operation of the photovoltaic project, or (iv) which would encumber all or any portion of the photovoltaic project. Seller has valid rights in the Premises as set forth in the Purchase Agreement and Purchaser has not leased the Premises to any person other than Seller.

ARTICLE 15: ASSIGNMENT AND FINANCING

15.1 Assignment By Seller: Seller shall not sell, transfer or assign (collectively, an “Assignment”) Seller’s rights or obligations under the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Seller may (i) assign the Agreement to an Affiliate of Seller provided that such Affiliate has expertise in the management of photovoltaic assets and economic strength which is equal to or greater than that of Seller; (ii) assign the Agreement in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Seller and (iii) assign the Agreement to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the Generating Facilities (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). The Financing Parties shall have the right but not the obligation to assume the Agreement in the event of a Seller Default. For avoidance of doubt, in the event that a Financing Party exercises its right to assume the Agreement in the event of a Seller Default, such financing Party shall assume all obligations under this Agreement as well as assuming all of Seller’s rights and interests under the Agreement, and thereafter shall become the successor-in-interest to Seller under this Agreement. In the event that a Financing Party exercises its right to assume all of Seller’s rights, interests, and obligations under the Agreement, it shall so assume in writing. Where Seller is not required to get prior written consent of Buyer, Seller shall provide prior written notice of assignment except for any assignments to Financing Parties. Any Financing Party shall be an intended third-party beneficiary of
this Section 15.1. Any assignment by Seller without any required prior written consent of Buyer shall not release Seller of its obligations hereunder.

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

ARTICLE 16: OTHER TERMS & CONDITIONS

16.1 NOTICES

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

Buyer: As listed in Exhibit D.

Seller: As listed in Exhibit D.

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

16.2 COMPLIANCE WITH ALL LAWS

The Parties shall at all times comply with all applicable laws, ordinances, rules and regulations. The Parties shall keep themselves fully informed of Buyer’s charter, codes, ordinances and regulations and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Seller shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under.
16.3 NO DEDICATION

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

16.4 NON-WAIVER OF RIGHTS

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

16.5 HEADINGS

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

16.6 NO THIRD PARTY BENEFICIARY

Except as to Seller’s Financing Parties, who are intended third party beneficiaries of this Agreement and the License, neither this Agreement nor the License shall be construed to create rights in, or to grant remedies to, any third party.

16.7 FORWARD CONTRACT

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

16.8 GOVERNING LAW

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

16.9 VENUE
In the event that suit shall be brought by either party hereunder, the parties agree that
venue shall be exclusively vested in the state courts of California in the County of Santa
Clara or if federal jurisdiction is appropriate, exclusively in the United States District
Court in the Northern District of California, San Jose, California.

16.10 NATURE OF RELATIONSHIP

a) The duties, obligations and liabilities of the Parties are
intended to be several and not joint or collective. The Agreement shall not be
interpreted or construed to create an association, joint venture, fiduciary
relationship or partnership between Seller and the Buyer or to impose any
partnership obligation or liability or any trust or agency obligation or relationship
upon either Party. A Party shall not have any right, power or authority to enter into
any agreement or undertaking for, or act on behalf of, or act as or be an agent or
representative of or otherwise bind the other Party.

b) Seller shall perform pursuant to this Agreement as an
independent contractor and not as an officer, agent, servant, or employee of Buyer.
Seller shall be solely responsible for the acts and omissions of its officers, agents,
employees, contractors, and subcontractors, if any. Nothing herein shall be
considered as creating a partnership or joint venture between the Buyer and Seller.
No person performing any services and/or supplying all goods shall be considered
an officer, agent, servant, or employee of Buyer, nor shall any such person be
entitled to any benefits available or granted to employees of the Buyer.

c) Seller shall be responsible for all obligations and payments,
whether imposed by federal, state or local law, including, but not limited to, FICA,
income tax withholdings, unemployment compensation, insurance, and other
similar responsibilities related to Seller’s performing services and work, or any
agent or employee of Seller providing same.

d) Any terms in this Agreement referring to direction from
Buyer shall be construed as providing for direction as to policy and the result of
Seller’s work only, and not as to the means by which such a result is obtained.
Buyer does not retain the right to control the means or the method by which Seller
performs work under this Agreement.

16.11 SUBCONTRACTING

All subcontractors shall be subject to background checks and Seller shall notify Buyer of
its intent to use a subcontractor prior to such subcontractor’s entry on the Premises. For
any subcontract with a contract price of $20,000 or greater, Seller is prohibited from
subcontracting this Agreement or any part of it unless such subcontracting is first approved.
by the Buyer in writing, which written approval shall be provided within five (5) days of submission of name of proposed subcontractor. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

16.12 GOOD FAITH & FAIR DEALING

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

16.13 SEVERABILITY

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

16.14 COUNTERPARTS

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

16.15 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.

16.16 NECESSARY ACTS AND FURTHER ASSURANCES

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

16.17 TIME OF THE ESSENCE

Time is of the essence in performance by the Parties.

16.18 CONSTRUCTION

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

16.19 ENTIRE AGREEMENT, INTEGRATION/MERGER CLAUSE

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

16.20 NON-DISCRIMINATION

Seller shall comply with all applicable Federal, State, and local laws and regulations including the City of Morgan Hill’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Articles 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff,
rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

16.21 NON-EXCLUSIVE CONTRACT

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

16.22 MODIFICATION

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

16.23 HAZARDOUS SUBSTANCES

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

16.24 DISENTANGLEMENT

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

16.25 ACCOUNTABILITY
Seller will be the primary point of contact and assume the responsibility of all matters relating to the Agreement, including those involving the manufacturer and/or deliverer and/or any subcontractor, as well as payment issues. If issues arise, the Seller must take immediate action to correct or resolve the issues.

16.26 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.

16.27 DAMAGE AND REPAIR BY SELLER

Any and all damages caused by Seller’s negligence or operations shall be repaired, replaced or reimbursed by Seller at no charge to the Buyer. Repairs and replacements shall be completed with seventy-two (72) hours of the incident unless the Buyer requests or agrees to an extension or another time frame. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Seller’s vehicles or during performance shall be responsibility of the Seller. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer’s Director of Facilities and Fleet Department. Damage observed by Seller, whether or not resulting from Seller’s operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer’s best interests.

16.28 ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

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

16.29 COOPERATION WITH REVIEW

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

16.30 AUDIT RIGHTS UNDER STATE LAW

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

16.31 DEBARMENT

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

16.32 CALIFORNIA PUBLIC RECORDS ACT

The Buyer 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 Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the Buyer’s deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer’s deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

16.33 DEBT LIABILITY DISCLAIMER

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

16.34 USE OF BUYER'S NAME FOR COMMERCIAL PURPOSES

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer as provided by the Director of Facilities and Fleet Department.

16.35 ACCOUNT MANAGER

Seller must assign an Account Manager to the Buyer to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the Buyer's requirements. Seller represents and warrants that such person will ensure that the Buyer receives adequate support, problem resolution assistance and required information on a timely basis.
By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

SELLER:  BORREGO SOLAR SYSTEMS, INC.

By: 
Name: Michael Hall
Title: CEO

By: 
Name: William Bush
Title: CFO

BUYER:  THE CITY OF MORGAN HILL

Delegated Authority by the City Council
J. Edward Tewes, City Manager

Approval as to Form:

Danny Wan
City Attorney
By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

SELLER: BORREGO SOLAR SYSTEMS, INC.

By: ____________________________
   Name: Michael Hall
   Title: CEO

By: ____________________________
   Name: William Bush
   Title: CFO

BUYER: THE CITY OF MORGAN HILL

______________________________
Delegated Authority by the City Council
J. Edward Towes, City Manager

Approval as to Form:

______________________________
Danny Wan
City Attorney

Morgan Hill City Council Approval: July 27, 2011
EXHIBITS INCORPORATED INTO AGREEMENT

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

Exhibit 1 – [Intentionally Left Blank].
Exhibit 2 – Description of Generating Facilities and Licensed Site
Exhibit 3 – Sites and Facilities Descriptions
Exhibit 4 – Technical and Warranty Requirements
Exhibit 5 – Engineering and Construction Requirements
Exhibit 6 – Contract Price
Exhibit 7 – Operations Forecasts, Scheduling Protocols, & Monitoring
Exhibit 8 – Expected Contract Quantity Form
Exhibit 9 – Form of Attestation
Exhibit 10 – Insurance Requirements
Exhibit A

License

Borrego Systems, Inc.

Re: Proposed Solar Power Installations at The Morgan Hill Police Department and Aquatics Center (the “Site”).

Dear Authorized Representative:

Reference is made to the Power Purchase Agreement dated as of August 15, 2011 (the “Agreement”) and entered into by and between the undersigned the City of Morgan Hill ("Buyer") and Borrego Solar Systems, Inc. ("Seller"), pursuant to which Seller will install, finance, operate, and maintain a solar photovoltaic system at each of the above-referenced Sites. Capitalized terms used herein but not defined herein shall have the meaning set forth in the Agreement. This License is granted to the Seller for consideration set forth in the Agreement and the terms of the Agreement are hereby incorporated into this License.

By our signature below, Buyer grants to Seller and its agents, employees, contractors and subcontractors (collectively, the “Seller”), a license (the “License”) to construct, maintain and operate its Generating Facilities on the Project Sites, as more particularly shown and described in Exhibit 2 of the Agreement (the “License Area”).

The License shall be effective for the same term as the Term of the Agreement and shall be irrevocable during the Term and any extensions thereof. In addition, the License shall remain in effect for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days after the Term, for the sole purpose of removing the Generating Facilities or Generating Facilities and restore the Premises pursuant to the Agreement.

The License shall be for the sole purposes of installing, operating, and maintaining the Generating Facilities or Generating Facilities, including commercially reasonable access to, on, over, under and across the Project Sites during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the Generating Facilities or Generating Facilities or the Premises.

Seller shall contract directly with appropriate providers for utility services, if necessary, for the operation of its Generating Facilities.

Seller shall not use the License Area or permit anything to be done in or about the License Area, which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter to be enacted or promulgated. Licensee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, government rules, regulations, or requirements relating to the Seller’s use or occupancy of the License Area. Licensee acknowledges that, except as otherwise provided for in the Agreement, neither the City nor City have made any representations or warranties concerning the License Area and Licensee shall be deemed to have inspected the License Area and accepted in its “as is” condition.
This Licensee shall not assign its rights under the License without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that without the prior written consent of Buyer, Licensee may: (i) assign the License to an Affiliate of Licensee provided that such Affiliate has expertise in the management of photovoltaic assets and economic strength which is equal to or greater than that of Licensee; (ii) assign the License in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Licensee and (iii) assign the License to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the Generating Facilities (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). Any attempt by Licensee to assign the License in violation of this provision shall automatically terminate the License.

We further acknowledge and agree that:

1. The Generating Facilities or Generating Facilities are the personal property of Seller, and shall not be considered the property (personal or otherwise) of Buyer upon installation of the Generating Facilities or Generating Facilities at the applicable Premises. Each Generating Facilities is more particularly described in the Specifications.

2. The Generating Facilities or Generating Facilities shall not be considered a fixture of the applicable Premises. Accordingly, Buyer hereby grants Seller and any Financing Party the right to file any UCC-1 financing statement or fixture filing that confirms its interest in the applicable Generating Facilities or Generating Facilities.

3. Seller or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under the Agreement. Buyer will not charge Seller any rent for such right to access the Premises.

4. The Financing Parties have a first priority perfected security interest in the Generating Facilities or Generating Facilities. The Financing Parties are intended third party beneficiaries of Buyer’s agreements in this Grant of Access Rights.

5. During the Term, Seller’s access rights under this License are preserved and Buyer shall not interfere with or permit any third party to interfere with such rights or access. The License granted hereunder shall be irrevocable during the Term of the Agreement, except upon expiration or earlier termination of the Agreement, in which case it shall only be revocable as it relates to the Generating Facilities or Generating Facilities. Seller shall have access to the Premises beyond the Term for the purpose of removing the Generating Facilities or Generating Facilities, for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days.

6. Upon any rejection or other termination of the Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall execute a new grant of access rights in favor of the Financing Parties (or their designees) on substantially the same terms as this Grant of Access Rights.
a new grant of access rights in favor of the Financing Parties (or their designees) on substantially the same terms as this Grant of Access Rights.

7. Buyer will not take any action inconsistent with the foregoing.

Acknowledged and agreed by:

BORREGO SOLAR SYSTEMS, INC.

By: [Signature]
Name: Michael Hall
Title: CEO

By: [Signature]
Name: William Bush
Title: CFO

THE CITY OF MORGAN HILL

[Signature]
Delegated Authority by the City Council
J. Edward Tewes, City Manager

Approval as to Form:

[Signature]
Danny Waa
City Attorney
Exhibit B

Certain Agreements for the Benefit of the Financing Parties

Reference is made to the Power Purchase Agreement dated as of August 15, 2011 (the “Agreement”), by and between Borrego Solar Systems, Inc. (“Seller”) and the City of Morgan Hill (“Buyer”). Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement. Buyer acknowledges that Seller will be financing the installation of the Generating Facilities or Generating Facilities either through a lessor, lender or with financing accommodations from one or more financial institutions and that Seller may sell or assign the Generating Facility or Generating Facilities or may secure Seller’s obligations by, among other collateral, a pledge or collateral assignment of the Agreement and a first security interest in the Generating Facility or Generating Facilities. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Seller has notified Buyer in writing, Buyer agrees as follows, notwithstanding any contrary term of the Agreement:

(a) **Consent to Collateral Assignment.** Buyer consents to either the sale or conveyance to a lessor or the collateral assignment by Seller to any Financing Party, of Seller’s right, title and interest in and to the Agreement.

(b) **Notices of Default.** Buyer will deliver to each Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Buyer under the Agreement, inclusive of a reasonable description of Seller default. No such notice will be effective absent delivery to all Financing Parties. Within one hundred and twenty (120) days of Seller achieving Commercial Operation of each Site’s photovoltaic system, Seller shall provide Buyer with each Financing Party’s name, address, telephone, and facsimile numbers.

(c) **Non-Collusion; Termination.** Buyer and Seller shall not collude to mutually agree to terminate any applicable Agreement without the written consent of all Financing Parties.

(d) **Rights Upon Event of Default.** The Financing Parties, as collateral assignees, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under the Agreement in accordance with the terms hereof and only in the event of Seller’s or Buyer’s default. The Financing Parties shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreement and the Generating Facilities or Generating Facilities.

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

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

Upon any rejection or other termination of the Agreements pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with the Financing Parties or any assignee thereof having the same terms and conditions as the Agreements.

(d) Right to Cure. Buyer will not exercise any right to terminate or suspend the Agreements unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend the Agreements, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in the Agreements. The Parties’ respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default cannot reasonably be cured by any Financing Party within such period and any Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

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

***
**Exhibit C**

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

Morgan Hill Police Department and Aquatics Center:

<table>
<thead>
<tr>
<th>Early Termination Occurs in Year [of System Term]:</th>
<th>Column 1 Early Termination Fee where Buyer does not take Title to the System ($/Wdc including costs of removal)</th>
<th>Column 2 Purchase Date Occurs on the 91st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)</th>
<th>Column 2 Early Termination Fee where Buyer takes Title to the System ($/Wdc, does not include costs of removal)*</th>
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Exhibit D – Notice Information

Buyer:
The City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA CA 95017-4128
Attn: Anthony Eulo, Project Manager
Telephone: (408) 779-7271
Facsimile: (408) 779-6282
Email: Anthony.Eulo@morganhill.ca.gov

Seller:
Borrego Solar Systems, Inc.
2500 Venture Oaks Way, Suite 390
Sacramento, CA
Attn: Faris Matin
Telephone: (510) 496-8715
Facsimile: (888) 843-6778

With a copy to:
Covington & Burling LLP
One Front Street
San Francisco, CA 94111
Attention: Bruce Deming, Esq.
Telephone: (415) 591-7051
Facsimile: (415) 955-6551

Financing Parties:
USBDC, LLC
1307 Washington Avenue,
Suite 300
Saint Louis, MO 63103
Attn: Director of Asset Management - Solar
Telephone: (314) 335-2600
Facsimile: (314) 335-2602

With a copy to:
Bocarsly Emden Cowan
E-mail & Arndt LLP
633 West Fifth Street, 70th Floor
Los Angeles, CA 90071
Attn: Eugene Cowan, Esq.
Telephone: (213) 239-8015
Facsimile: (213) 239-0410

East West Bank
Loan Servicing Department
9300 Flair Drive, 6th Floor
El Monte, CA 91731

With a copy to:
K&L Gates
630 Hansen Way
Palo Alto, CA 94304
Attn:
Telephone: (650) 798-6708
Facsimile: (650) 798-6701
Exhibit 1
INTENTIONALLY LEFT BLANK
Exhibit 2
Description of Generating Facilities and Licensed Sites
Exhibit 3
Site and Facilities Descriptions

Police Department – 16200 Vineyard Blvd., Morgan Hill, CA 95037

- System size: 278.88 kW DC
- Combination of roof arrays and solar shade structures
- Galvanized structural steel solar shade structures installed on existing parking lot
- Sunlink (or equivalent) racking system installed on existing roof
- Solar Modules: (996) Yingli 280 watt (or equivalent)
- Inverter: (1) SMA 250 kW (or equivalent)

Aquatic Center - 16200 Condit Road, Morgan Hill, CA 95037

- System size: 275.52 kW DC
- Galvanized structural steel solar shade structures installed on existing parking lot
- Solar Modules: (984) Yingli 280 watt (or equivalent)
- Inverter: (1) SMA 250 kW (or equivalent)
1. General Technical Requirements
In an effort to assure reliability, quality, and longevity of the systems, and to establish a minimum quality level whereby Buyer would consider a buyout after ten (10) years, Buyer provides the following general technical requirements and product specifications to which the Proposer shall comply.

A. Structural responsibility - All structures, including array structures, shall be designed to resist dead, live, plus wind and seismic loads for the area. Thermal loads caused by expected fluctuations of component and ambient temperatures must be combined with all the above load combinations. Structural adequacy of buildings, roofs, or structures impacted by the addition of the PV system, shall be the responsibility of the contractor. These calculations must be stamped and approved by a registered professional engineer with appropriate experience and submitted to Buyer as part of the Preliminary Requirements.
All PV system components must be built such that the structure complies with applicable California Building Code and wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7). The structure must be able to withstand design wind speeds of at least 85 mph (3-second gusts). “Withstand” means no damage and power output can continue at wind speeds less than 85 mph.
The minimum no-damage, no power interruption design earthquake load and frequency shall be consistent with Seismic Zone 4, the applicable seismic standards for the San Francisco Bay Area. The parking area PV-support structures at Project sites shall be constructed as elevated solar support structures. The PV support system design must be coordinated with the existing parking layout on the structure. This may include a variety of canopy configurations (single aisle, double aisle, single column, cantilever design, etc) so as to minimize column obstructions with vehicular traffic and allow for maximum flexibility of space configurations. The elevated PV system layout must also accommodate Fire Department access and fire protection requirements. Proposers shall be expected to comply with and anticipate the necessity to move or remove/replace roof-mounted solar PV systems once during the term of the contract, to allow for roof maintenance and/or replacement. This time period shall not exceed 20 days and shall be coordinated to occur during winter months. If roofing takes longer than 20 days Buyer agrees to pay Seller the value of all lost revenue and RECs. Seller agrees that labor is $65 an hour and will escalate at 3% annually over the Term of the Agreement. All equipment, rentals, and materials will be cost plus 15% overhead and profit which will be paid by Buyer if duration exceeds the 20 calendar days or additional removals are required for reasons not caused by Seller.

B. Corrosion Resistance - All structural components, including array structures, shall be painted, coated, or otherwise protected in a manner commensurate with the minimum 20-year design life. Particular attention shall be given to the prevention of corrosion. AL or HDG, no painting.

C. Codes and Standards - All systems must be installed in accordance with all applicable requirements of local electrical codes and the current (or other appropriate) version of the National Electrical Code (NEC) as used by Buyer, including but not limited to Article 690, and other applicable codes and regulations as outlined in the National Fire Protection Association (NFPA). In addition, all work shall be designed and installed in accordance with the latest edition of all applicable codes, standards, and recommendations of the following agencies:
ANSI – American National Standards Institute
ASHRAE - American Society Of Heating, Refrigeration, and Air Conditioning Engineers
ASCE - American Society of Civil Engineers
ASME - American Society of Mechanical Engineers
CAL OSHA - California / Occupational Safety and Health Administration
CBC - California Building Code
CEC - California Energy Commission
ETL - Electrical Testing Laboratories
IEEE - Institute of Electrical and Electronic Engineers
ICEA - Insulated Cable Engineer's Association
IAEI - International Association Of Electrical Inspectors
IPMVP - International Performance Measurement and Verification Protocol
NEMA - National Electrical Manufacturers Association
NESC - National Electrical Safety Code
NETA - National Electrical Testing Association
NEC - National Electrical Code
UL - Underwriters Laboratories

Other codes that may apply to the overall installation include:

- IEEE 1547 - Standards for interconnections of Distributed Resources with Electric Power Systems.
- ANSI/IEEE Std 928-1986 IEEE recommended criteria for terrestrial photovoltaic power systems.
- ANSI/IEEE 519-1992 recommended practices and requirements for harmonic control in electrical power systems
- IEEE 929-2000, "Recommended Practice for Utility Interface of PV Systems"
- 50kW and below
- ASTM B3-74 (1980) Specifications for Soft or Annealed Copper Wire
- AEIC CS6-84 Specifications for Ethylene Propylene Rubber Insulated Shielded Power Cables Rated 5 through 69 kV
- IEEE 48-1975 Standard Test Procedures and Requirements for High-Voltage Alternating Current Cable Terminations
- NEMA WC 8 R 1982 Ethylene-Propylene-Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- NEMA WC 3 Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- NEMA W7 Cross-Linked-Thermosetting-Polyethylene-Insulated Wire and Cable for Transmission & Distribution of Electrical Energy
- The Pad-mounted transformer, disconnect switches and all components shall be designed, manufactured and tested in accordance with the latest applicable ANSI, IEEE, NEMA and UL standards including the following:
- ANSI/IEEE C37 – Circuit Breakers, Switchgear, Relays, Substation and Fuses.
- ANSI C57.12; 13 – Standard General Requirements for Distribution, Power and Regulating Transformers.
- IEEE 48 - Test Procedures and Requirements for High voltage AC cable Termination.
- NEMA PB 2 - Dead Front Distribution Switchboards.
- NEMA TR1 - Requirements for Liquid Filled Transformers.

American Society for Testing and Materials (ASTM):
1. ASTM B 3: Soft or Annealed Copper Wire.
2. ASTM B 187: Copper Bus Bar, Rod, and Shapes.

Underwriters Laboratories, Inc. (UL) 467: Grounding and Bonding Equipment. -- Systems must be designed and installed using UL (or approved equivalent) listed components. In addition to the above, specific requirements for individual components of the PV system include but are not limited to the following guidelines:

D. PV Modules:
The PV Modules shall be UL 1703 listed, IEEE 1262 approved, and currently on the California Energy Commission list of Eligible Renewable Equipment. In addition, all modules must have a minimum 20-year warranty. The Contractor shall create a uniform appearance of the arrays and spacing between individual modules and panels should be uniform. As much as possible, all mechanical hardware, conduit, junction boxes, and other equipment should be concealed beneath and/or behind the array when practical or required by applicable code.

E. Inverters/Isolation Transformer Combination Equipment:
In addition to being listed to UL 1741, inverters must also be unused and of recent manufacture and listed on the California Energy Commission’s (CEC) current Eligibility List. Inverters must be sized to properly accommodate the DC input from the PV panels under all expected electrical, thermal, and other operational conditions and be designed for normal unattended operation. The inverter must contain all self-protection features as stated in IEEE 929 including over and under voltage and frequency safeguards. An integral, anti-islanding protection scheme shall prevent the inverter from feeding power to the PG&E grid in the event of a utility outage. Inverter efficiency shall be rated at greater than or equal to 94.5%.
The inverter shall include provisions for automatic operation including start up, shut down, self-diagnosis, and fault detection. Inverter shut off and reset toggle switches shall be provided. The inverter must have a continuous power rating that is suitable for the photovoltaic system output and AC current distortion at rated power must be less than 5% Total Harmonic Distortion (THD)) at all power output loadings. The inverters shall be interconnected to the customer’s electrical panel by per Code and utility requirements.
The inverters shall be housed in an appropriately waterproof and dust proof enclosure, or in a building. The inverters shall have provisions to prevent moisture condensation and entrance of rodents into air intake or exhaust ports. The inverter enclosure shall take into consideration the effects of direct sunlight and extreme weather such that the inverters are appropriately shielded.
from the elements. The inverter enclosure should be well ventilated so that the inverters operate safely at or near their maximum power point (MPP).

The following specific codes and standards shall apply to the inverter installation and operation:
- ANSI Test Code C57.12.91 for Factory Tests of Dry Type Transformers.

F. Balance of System (BOS) Components:
The system shall be comprised of UL (or approved equal) listed components where these components are available.

Additional requirements include but are not limited to:

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

H. Circuit Disconnects Switches and Enclosures:
Enclosures shall be surface mounted type, unless otherwise noted, and of NEMA type 3R, waterproof.

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

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

When used for disconnecting, disconnects for branch circuit protection shall be located per code. Switchgear must be accessible. The location of the disconnect switch may be acceptable as long as it is accessible 24/7 and approved by PG&E.

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

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

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

PV panel strings must be individually protected from short circuit conditions that may originate within the panels themselves. String level fusing is all that will be offered.

J. Wiring and Connectors:
Wire shall be copper or alum and sizes referred to on the Proposer’s drawings must refer to copper wire sizes.

For medium voltage conductors, splices, and other related items, please refer to PG&E specifications.

Installation of copper wires, cables, and connection devices shall be in accordance with the manufacturer’s instructions and CEC-2001, Part 3. Cables must not be bent to a smaller radius than is recommended by the manufacturer.

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

K. Raceways:
Steel Conduit System shall meet the following specifications:
1. UL Listed:
The galvanized rigid steel conduit must be UL Listed. All conduit, fittings, and accessories must be new, unused material. Applicable UL standards may include: UL 6 Standard for Safety, Rigid Metal Conduit, UL 514B Standard for Safety, Fittings for Conduit and Outlet Boxes. EMT should be recognized as acceptable
2. The conduit shall be hot dip galvanized inside and out with hot galvanized threads.

L. Connections to Existing Circuit Breakers:
The appropriate Volt circuit breakers, with the required AIC rating shall be utilized and shall be noted on the one line diagram.
The Proposer shall supply a step-up transformer to match the voltage of the local utility distribution system if required. The step-up transformer shall be compatible with utility standards for voltage, phasing and grounding. This transformer shall be housed in the dust-tight and rain-tight enclosure. It may be dry type or liquid-filled type. For oil filled transformers, the PV Contractor shall provide an adequate oil containment system. PCBs shall not be permitted.
The step-up transformer shall include an automatic positive load-breaking means of disconnect (e.g., switch, circuit breaker, etc.) on the high side. The disconnect means shall be provided to disconnect all phases simultaneously.

M. Grounding:
Provide driven ground rod or equal per code when specified and provide green or bare copper equipment ground conductors sized in accordance with NEC on main AC power circuit and DC collector circuits. If required by Code, ground rods shall be copper clad steel 5/8 inch * 10 feet unless otherwise indicated on one line diagram. Appropriate tie in and grounding of the entire PV system, including roof-mounted components, shall be per NEC-250 requirements.

N. Operational Identification and Warnings:
Project Sign:
Proposers shall install signs for instruction or warning identifying that a solar PV system is operational on the premises at appropriate locations and that there are potentially multiple power sources on the premises.

O. Signage:
All signage shall be per code.

2. General Documentation Requirements
The Proposer shall design and engineer its solar PV system(s) at the Project sites to maximize the solar energy resources at these facilities, taking into consideration Project site electrical demands and load patterns, proposed installation sites, available solar resources, applicable land use restrictions, installation cost, and other relevant factors.
The Proposer shall identify an appropriate location for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:
* Ease of maintenance and monitoring
* Efficient operation
* Low operating losses
* Secured location and hardware
* Compatibility with existing facilities
The following documents generated by the Proposer as part of this project shall also be provided to Buyer for review and record purposes.
The documents should be provided at the 50%, 90%, and 100% design stages. Buyer and PG&E (for work related to them) will need to approve the final detailed design as a part of the preliminary requirements of the PPA prior to start of construction.
Buyer shall notify the Proposer should it identify a non-conforming design, commissioning, or ongoing operation and maintenance item or issue. Documents and information shall be sufficient to fully describe in detail the following and shall include but shall not be limited to:

1. Project schedule, updated monthly or sooner should significant changes occur
2. 3. Design basis
4. Equipment and system sizing computations
5. Design computations that are not proprietary in nature
6. 7. Construction detail drawings
8. Construction plans and compliance documents, and project permits
9. All electrical drawings, single line, physical layout, wiring diagrams
10. Intentionally left blank
11. All documents submitted to and provided by regulatory permitting and jurisdictional agencies and PG&E.
12. Commissioning plans and reports and records
13. Operation and maintenance manuals, & warranty information
14. All documents shall be prepared according to current industry standards. All deliverables shall be submitted, depending on their type, separately in draft and final document format. Final documents shall be inclusive of all comments and/or issues raised during the review of draft documents.

All draft and final deliverables shall be submitted in 2 bound and 1 digital copies supplied on a CD, unless otherwise specified. All digital deliverables shall be in the latest version of the applicable software. Formatting for 11 x 17 drawing print size is preferred. Digital copies shall include required drawings in AutoCAD and Adobe Acrobat PDF format and required specifications and design reports in MS Word and Adobe Acrobat PDF formats. The following descriptions indicate the content of those interim design submittals to be presented to Buyer.

3. Regulatory, Permit, and Licensing Requirements

All work undertaken per this Agreement shall be in accordance with all Local, State and Federal (LORS) laws, ordinances, regulations and standards. Prime and Sub contractors shall possess current valid California contracting licenses for the applicable classification of work performed; properly licensed or certified individuals shall carry out all professional work.

It will be the sole responsibility of the Proposer herein to seek and obtain all permits including but not limited to those from Buyer’s Planning Department for final zoning compliance review, Public Works Department for building permits and inspections, Pacific Gas and Electric for Utility interconnection applications and final interconnection, and any other relevant permits. The Proposer shall be responsible for and shall obtain all necessary permits for the project, wherein Buyer will be the signatory only if required and appropriate. The Proposer shall be responsible for all costs including all fees and taxes regardless of the signatory. The Proposer shall supply and install all equipment required to interconnect the solar PV systems to PG&E. The Proposer shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Proposer excluding any service upgrade costs.

4. Construction, Operation and Maintenance General Obligations and Warranties

The Proposer shall provide its own construction office or trailer on the site during construction and shall include temporary electricity if needed by the local electric utility. Buyer shall not provide
office or storage space for the Proposer’s use. County agrees to turn over work area for construction and Seller is not responsible for County parking needs. Throughout the construction of the photovoltaic project, the Proposer shall keep the site free from accumulations of waste material, debris or rubbish. The Proposer shall remove all waste, rubbish, tools, and surplus materials from the work site and keep the area clean. Clean up shall be performed in accordance with established safety and proper disposal procedures and in accordance with all applicable federal, state and local laws, rules, and ordinances. The Proposer will be responsible for all aspects of maintaining the PV array and BOS, including but not limited to cleaning the arrays, replacing broken or worn out system components, performing maintenance in accordance with equipment manufacturer recommendations, and ensuring that every part of the array is operating according to design, producing the maximum amount of power possible and free of power quality issues. To the maximum extent possible, the contractor shall schedule maintenance and repair of the solar array and BOS at times when output of the array is at its lowest point so that power output is maximized. The Proposer shall secure the following minimum warranties for the PV system(s) which shall be fully transferable if the Buyout option is exercised:

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

The PV plants shall be operated and maintained in accordance with current industry standards, to protect the longevity of the facility, to maximize energy production, to fully support Buyer’s goals, to safeguard the leased facilities, to not interfere with or cause a nuisance to ongoing facility operations, and to not disturb neighbors. No glare studies are required.
Exhibit 5

Engineering and Construction Requirements

1. DESIGN PHASE

1.1. Standard of Care

- Designer must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in its area of specialty in the State of California.

- Designer must perform Services in compliance with all applicable federal, state and local codes, statutes, laws, regulations and ordinances, including environmental, energy conservation, and disabled access requirements.

- All designs must comply with all regulations and standards of the Fire Marshal having jurisdiction over the Project.

- Designer must use its best efforts to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project.

1.2. Signing and Stamping Documents

- Permit Set Documents must be signed and stamped by the Design Professional(s) as appropriate to the discipline of Work.

- 65% Set Documents will not be stamped

- CD documents will be stamped

- As Built will not be stamped

1.3. Insurance Requirements

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

2. PERMITS FROM THE OFFICE OF THE FIRE MARSHAL AND AGENCY BUILDING DEPARTMENT

2.1. OVERVIEW

- Installation and Acceptance permits are required from the Office of the Fire Marshal, having the jurisdiction of the project.

- The licensed professional engineer is responsible for completing the installation permit application, submitting the permit application to the Office of the Fire Marshal, and receiving the approved permit before proceeding with Work. None of the above described work may proceed without receipt of an approved Fire Marshal permit.

- The Fire Marshal shall conduct compliance inspections, and final acceptance inspections, of the Contractor's work related above items of work. The "compliance inspections" are for Fire Marshal compliance only and do not relive the contractor
from performing all work to the standards established by the entirety of the contract
documents.

2.2. SUBMITTALS

2.2.1. Product Data Submittals

- The submittal process for Fire Marshal permitted work takes place in two steps:
  - The Contractor makes submittals to the Buyer without the actual Permit
    application. These submittals must fulfill all the requirements of Buyer’s
    review and acceptance.
  - After Buyer acceptance of these submittals, the Contractor shall complete the
    Fire Marshal Permit application form, attached as appendix (a) to this section,
    and submit the following directly to the Office of the Fire Marshal:

2.2.2. Plan submittal information described in the applicable appendix (c) of this section
(the contractor must check with the Office of the Fire Marshal for the latest version of
these appendices; the appendices of this section are provided for information only).
For items of work defined above for which there is not an associated appendix to this
section, the contractor must contact the Office of the Fire Marshal to obtain specific
submittal requirements;

2.2.3. A completed permit application form for each item of work; and

2.2.4. A copy of the Buyer’s submittal acceptance form for the corresponding submittal,
stamped and signed by the Buyer’s Authorized Representative, along with all
submittal review comments provided to the contractor.

- Permit review/processing time for Step (2), Fire Marshal Permit applications, is
  15 working days from the date of the Fire Marshal stamped receipt of the
documents. The contractor must submit one original, signed permit application
with the original complete submittal package, four copies of the permit
application. One of the copies shall be to the Buyer.

2.3. FEES

2.3.1. The Contractor is responsible for payment of all Fire Marshal and Building Official
review and permitting fees. Discussion of exemptions of fees at a certain level.

3. FIRE PROTECTION PLAN

3.1. Contractor shall prepare and submit to Buyer a written fire protection plan. The written
fire protection plan.

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

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

3.2.2. Procedures for:

3.2.2.1. Reporting emergencies to the local fire department;
3.2.2.2. Emergency notification, evacuation and/or relocation of all persons at the
project site.
3.2.2.3. Hot work operations;
3.2.2.4. Management of hazardous materials, if any;
3.2.2.5. Removal of combustible debris, if any; and
3.2.2.6. Maintenance of emergency access roads.
4. GENERAL

4.1. DEFINITIONS

4.1.1. Hot Work - Hot work includes any operations capable of initiating fires or explosions, including cutting, welding, brazing, soldering, grinding, thermal spraying, thawing pipe, torch applied roofing, or any other similar activity.

4.1.2. Fire Marshal – Office of the Fire Marshal, Santa Clara County

4.1.3. SD&S No. SI-7 – Fire Marshal Standard Details & Specifications Number SI-7 (Construction Site Fire Safety)

4.2. ACCESS TO WORK

4.2.1. The Contractor must provide Buyer continuous access to the Work.

4.3. USE OF PROJECT SITE

4.3.1. Contractor must confine operations at the Project Site to areas permitted by law, ordinances, permits and the Contract Documents, and must not unreasonably encumber the Project Site with any materials, equipment, temporary structures, or temporary measures.

4.3.2. Contractor’s employees, or others subject to the Contractor’s control, are not permitted to reside on the Project Site in temporary living facilities.

4.4. WORKPLACE ENVIRONMENT

4.4.1. The use or possession of alcohol, weapons, or illegal controlled substances by the Contractor, or others subject to the Contractor’s control, on County property is prohibited.

4.4.2. The Contractor must ensure and maintain a workplace environment free of personal harassment and intimidation.

4.4.3. Conduct that creates an intimidating, hostile, or offensive workplace environment is prohibited. Such conduct includes, but is not limited to, the following:

- Verbal harassment, e.g., epithets, derogatory comments or slurs;
- Physical harassment, e.g., assault, impeding or blocking movement, gestures, staring, or any physical interference with normal work or movement;
- Visual forms of harassment, e.g., derogatory posters, letters, poems, graffiti, cartoons, or drawings.

4.4.4. Unwelcome and unwanted sexual advances constitute sexual harassment that is prohibited. For example, requests for sexual favors and verbal or physical conduct of a sexual nature are prohibited.

4.4.5. It is the responsibility of the Contractor to:

- Inform its employees and Subcontractors that behavior that creates an intimidating, hostile, or offensive workplace environment is prohibited;
- Create a workplace environment that is free from harassment; and,
- Take corrective action to stop prohibited behavior/conduct.
4.4.6. If in the reasonable opinion of the Buyer’s Authorized Representative, any employee of the Contractor or Contractor’s Subcontractors violate the prohibitions of this workplace environment, Contractor must immediately remove that person or Subcontractor from the Project upon Buyer’s request, and such person or Subcontractor must not be permitted to perform further Work on the Project Site.

4.5. DISRUPTION OF BUYER’S NORMAL OPERATIONS

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

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

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

4.7. DISPOSAL OF MATERIAL OUTSIDE PROJECT AREA

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

4.7.2. Hazardous Materials: must comply with all legal requirements, including but not limited to containerization, labeling, manifesting, transportation, disposal site, and use of properly trained personnel. No later than 15 Days after Contractor’s request for Final Inspection, Contractor must submit copies of all Hazardous Waste Manifests signed by Toxic Substances Disposal Facilities (“TSDF’s”) and certificates of disposal, to prove that Contractor has legally disposed of such materials. Submit four (4) copies of each manifest. All cost are to be covered by County for this type of disposal.

4.8. HAZARDOUS MATERIALS

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

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

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

4.8.4. Contractor must safely contain and store all its Hazardous Materials, and in the event of spill or discharge, must immediately notify all required Federal, State, County and local agencies including the fire department. Contractor must protect personnel from exposure and provide treatment as necessary.
4.8.5. Contractor must immediately advise Buyer of any potentially Hazardous Materials encountered at the Project Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.

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

4.8.7. Contractor must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials. Nothing in this Agreement, relieves Contractor of responsibility for compliance with all applicable laws and statutes, or other provisions of the Contract, particularly Contractor's responsibility for damage and preservation of life and property.

4.9. TRENCHING AND EXCAVATION

4.9.1. Before any excavation, Contractor must, pursuant to California Government Code §4216 and Cal/OSHA 8CCR1540, outline the excavation in white paint (preferably chalk or water base), provide two workdays notice to Underground Service Alert (1-800-227-2600), obtain a locater number, and follow all necessary procedures to avoid underground facility damage.

4.10. AIR POLLUTION CONTROL

4.10.1. Contractor and each Subcontractor must comply with all air pollution control rules, regulations, ordinances, statutes, and Project specific permit requirements of the Bay Area Air Pollution Control District and all other regulatory agencies that apply to any Work performed.

4.11. WATER POLLUTION CONTROL

4.11.1. Contractor must comply with all Federal, State and local water pollution prevention and storm drain pollution prevention rules, regulations, ordinances, statutes, guidelines.

4.11.2. If required by law, ordinance, regulation, code, permit or the requirements of the Contract Documents, Contractor must prepare a Project Specific Storm Water Pollution Prevention Program (SWPPP).

4.11.3. Contractor must exercise every reasonable precaution to protect storm drains, channels and all bodies of water from pollution, and must conduct and schedule operations so as to avoid or minimize muddying and silting of any waters. Contractor must construct whatever facilities are necessary or requested by Buyer to provide prevention, control and abatement of water pollution.

4.11.4. No provision of the Contract Documents relieves Contractor of responsibility for compliance with California Fish and Game Code §5650 et seq, and §12015 et seq, and applicable regulations of the Regional Water Quality Control Board, Santa Clara County flood control and water district requirements, or other applicable statutes relating to prevention and removal of water pollution.

4.11.5. Compliance with water pollution requirements does not relieve Contractor from responsibility to comply with all provisions of the Contract Documents, particularly Contractor's responsibilities for damage and preservation of property.
4.12. SOUND CONTROL

4.12.1. The Contractor must comply with all CAL OSHA requirements.

4.12.2. The Contractor must comply with all local sound control and noise level rules, regulations, and ordinances that apply to any Work performed pursuant to the requirements of the Contract Documents.

4.12.3. Each internal combustion engine, used for any purpose on the Project or related to the Project, must be equipped with a muffler of a type recommended by the Manufacturer. No internal combustion engine shall be operated on the Project without said muffler.

4.12.4. Noise level from and hours of Contractor’s operations, that are located within city limits, must comply with city ordinances or requirements. Contractor’s operations in Buyer’s unincorporated areas or areas which border a city, town or other county must comply with the noise level requirements per the Santa Clara County Ordinance Code or requirements adopted by other jurisdictions, whichever are more stringent. Contractor’s attention is directed to the current Santa Clara County Ordinance Code, section B11-194 2.6 “Construction/Demolition” for the maximum acceptable noise levels.

4.12.5. Noise level requirements apply to all equipment used in the Project including, but not limited to, trucks, transit mixers, generators, air-tools, or equipment that may or may not be owned by the Contractor. The use of loud sound signals must be avoided in favor of warning lights except those required by safety laws for the protection of personnel.

4.13. WORKER’S SANITARY PROVISIONS & USE OF BUYER’S FACILITIES

4.13.1. Contractor must conform to the rules and regulations for sanitary provisions established by the State, the County of Santa Clara, and any other applicable jurisdictions.

4.13.2. Contractor must provide and maintain toilets for use by its employees and the employees and representatives of the Buyer. These accommodations must be maintained in a neat and sanitary condition, and must comply with all applicable laws, ordinances and regulations pertaining to public health and sanitation.

4.13.3. Contractor’s personnel must not use Buyer’s facilities without Buyer’s express written permission, which will be at Buyer’s sole discretion. Such Buyer’s facilities include but are not limited to toilet facilities, food service facilities (cafeteria and coffee shop), utilities services of any kind, carts, fire extinguishers (except in emergencies), parking, storage space and any other facilities and services.

4.14. SUBMITTALS


- Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. Their purpose is to demonstrate those portions of the Work for which Submittals are required and the way the Contractor proposes to conform to the information provided and the design.

- All Submittals are instruments of Contractor.
• Buyer’s review of Submittals is for general compliance with Code. Contractor is solely responsible for all quantities, dimensions, weights, gauges, materials, Fabrication processes, construction methods, coordination with the Work of other trades, and construction safety precautions. Buyer’s review does not relieve the Contractor of responsibility for errors and omissions in the Submittals or from responsibility for proper fitting and construction of the Work, nor from furnishing materials and.

• When certification of materials, systems or equipment is required by the Contract Documents, Design Professional and Buyer are entitled to rely upon the accuracy and completeness of such certifications and the calculations and other professional analysis supporting the certifications.

• PM should define this timeline on the construction schedule

4.14.2. Contractor’s Responsibilities

• Contractor must, at its own expense, provide for Buyer’s review of all Submittals required by the Contract Documents.

4.15. SHOP DRAWINGS

4.15.1. Present Shop Drawings in a clear and thorough manner. Identify details by reference to sheet and detail, schedule, and room numbers shown on Drawings.

4.16. COMPLIANCE WITH LAWS AND REGULATIONS

4.16.1. Contractor must keep informed of governmental regulations that may affect the Work. Contractor must observe and comply with, and must cause all agents, employees, Subcontractors and Suppliers to observe and comply with said regulations.

4.16.2. This Contract is a Type I Contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, the Contractor must comply with all of the following:

• Contractor must, during the term of this Contract, comply with all applicable federal, state and local rules, regulations, and laws.

• Contractors must maintain financial records adequate to show that County funds paid pursuant to the Contract were used for purposes consistent with the terms of the Contract. These records must be maintained during the term of this Contract and for a period of five (5) years from the termination of this Contract or until all Claims, if any, have been resolved, whichever period is longer, or longer if otherwise required pursuant to other provisions of this Contract.

4.17. TAXES, UTILITIES, PERMITS, AND FEES

4.17.1. Taxes: Contractor must pay any or all taxes imposed by Federal, State, or local governments, that were legally enacted as of the Bid date or subsequently enacted during the Contract Time, including but not limited to Federal excise tax and all State and local sales and use taxes. Buyer will not furnish any tax exemption certificate or any document designed to exempt Contractor from payment of any tax on labor, services, materials, transportation, or any other items Provided by Contractor pursuant to the Contract Documents.
4.17.2. Utilities:

- Unless otherwise stated Contractor will pay for the installation, metering and consumption of all "temporary" utilities. "Temporary" utilities include electrical, water and sewer for the following through project completion:

4.17.3. To operate the Contractor’s field office;

4.17.4. To power and operate construction tools, temporary lighting, concrete, mortar and grout mixing and placement operations; and

4.17.5. Unless otherwise stated in the Contract Documents, Buyer will arrange and pay for utility companies to provide and install main metering devices and permanent utility services from the Utility company’s main service line to the metering devices. Once “permanent” utilities are connected Buyer will pay for all utility usage charges. For scheduling purposes, “permanent” power will be available to the Contractor prior to the start of the Commissioning phase Functional Testing, pursuant to Section 01810. Buyer will plan and schedule such permanent service connections in conjunction with the Contractor's Baseline schedule.

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

- Contractors must give all necessary notices and comply with all laws, ordinances, rules, regulations and lawful Orders relating to the Work, and to the preservation of the public health and safety.
- If Contractor performs any work contrary to such laws, ordinances, Orders, rules and regulations, Contractor shall bear all costs attributable thereto.
- Upon receipt, Contractor must Submit four (4) copies of all Contractor obtained permits to the Buyer.
- Contractor must arrange, coordinate, and pay for all permit related inspections unless otherwise provided in the Contract Documents.

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

4.17.8. Recycling: Contractor shall comply with all recycling requirements required to obtain a building permit.

4.18. EQUAL OPPORTUNITY REQUIREMENTS

4.18.1. The City of Morgan Hill is an equal opportunity employer. Contractor must comply with all applicable Federal, State, and local laws and regulations including Santa Clara County’s equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§503 and 504); California Fair Employment and Housing Act (Government Code §12900 et seq.); California Labor Code §1101 and §1102. Contractor must not discriminate against any Subcontractor, employee, or applicant for employment because of age,
race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental
disability, physical disability, medical condition, political beliefs, organizational
affiliations, or marital status in the recruitment, selection for training including
apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay or
other forms of compensation.

4.19. PATENTS

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

5. SUBCONTRACTORS

5.1. SUBLETTING AND SUBCONTRACTING

5.1.1. The Contractor must adhere to the rules governing subcontracting as set forth in the
Subletting and Subcontracting Fair Practices Act.

5.1.2. The Contractor is responsible for all Work performed pursuant to the requirements
of the Contract Documents, including Work Subcontracted to others. All persons
engaged in the Work of the Project are the responsibility of and subject to the control
of the Contractor.

5.1.3. No Subcontractor will be recognized as such, and all persons engaged in the Work
will be considered as employees of Contractor who is responsible for their work.

5.1.4. When any Subcontractor fails to execute a portion of the Work in a manner
satisfactory to Buyer, the Contractor must remove such Subcontractor immediately
upon written notice from Buyer, and the Subcontractor must not again be employed
on the Project.

5.2. SUBCONTRACTOR’S CONTRACTUAL OBLIGATIONS

5.2.1. By an appropriate agreement, Contractor shall require each Subcontractor and
Supplier, to the extent of that Subcontractor’s or Supplier’s Work, to be bound to
Contractor by the terms of the Contract, and to assume toward Contractor all the
obligations and responsibilities which Contractor, by these Contract Documents,
assumes toward Buyer.

5.2.2. Said subcontracts and agreements must preserve and protect Buyer’s rights
pursuant to the Contract with respect to the Subcontractor’s or Suppliers’ Work so the
subcontracting thereof will not prejudice such rights. Contractor must require each
Subcontractor to enter into similar agreements with its Sub-subcontractors.

5.2.3. Contractor must make available to each proposed Subcontractor and Supplier, prior
to execution of the subcontract or agreement, copies of the Contract Documents to
which the Subcontractor or Supplier will be bound and, upon written request of the
Subcontractor or Supplier, identify to the Subcontractor or Supplier any terms and
conditions of the proposed subcontract or agreement that may be at variance with the
Contract. Each Subcontractor must similarly make copies of all such Documents
available to its proposed Sub-subcontractors.
5.3. CONTROL OF SUBCONTRACTORS

5.3.1. Contractor must:

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

5.4. STOP NOTICES

5.4.1. Buyer will comply with California Civil Code Title 15, Chapter 4, §3179 and following, regarding Stop Notices.

5.4.2. All Preliminary and Stop Notices must be sent to the Buyer.

5.5 BUYER'S OTHER WORK

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

6. PROTECTION OF PERSONS AND PROPERTY

6.1. SAFETY PROVISIONS

6.1.1. Contractor is solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of work. This requirement applies continuously and is not limited to Normal Hours Of Work. No act, service, drawing or construction review, acceptance or other act by Buyer, Buyer's Project Inspector, Consultant or any other representative of Buyer is intended to include review of the adequacy of Contractor's safety measures at or near the Project Site, at any place of Fabrication, or anywhere else.

6.1.2. Contractor must take all necessary precautions on the Work for the safety of its workers, of Buyer's employees and the public, and must comply with all applicable Federal, State, and local safety laws and codes to prevent accidents or injury to persons on, about, or adjacent to where the Work is being performed.

6.1.3. Contractor must erect and properly maintain at all times, as required by the conditions and progress of the Work, all appropriate safeguards for the protection of workers and the public, and post danger signs warning against construction hazards, such as fire, toxics, pesticides, chemicals, odors, noise, vibration, equipment operations, obstructions, falling objects, falls and all other construction related hazards.
6.1.4. Contractor must designate a responsible member of its organization who will be present on the Project Site and who has the duty for prevention of accidents. Contractor shall inform Buyer by email delivered to: Anthony.eulo@morganhill.ca.gov, or such other email address that Buyer provides in properly noticed written notice to Seller, of the name, email, and phone number of Seller’s responsible member of its organization who will be present on the Project Site and who has the duty for prevention of accidents.

6.2. PUBLIC SAFETY AND CONVENIENCE

6.2.1. Contractor must provide for the safety of the public during construction and conduct its operations to minimize the amount of work posing potential hazards to the public.

6.2.2. Contractor must keep all walkways clear. Contractor must protect pedestrians from falling objects and water runoff.

6.2.3. Contractor's equipment must enter and leave the Project area via access routes designated or accepted in writing by Buyer, and move in the direction of public traffic at all times. All movements on or across public traveled ways must not endanger public traffic.

6.2.4. Contractor must immediately remove any spillage, debris, dirt, or mud resulting from hauling operations along or across any public traveled way.

6.2.5. Contractor must minimize inconvenience or obstruction to the public. When Contractor's operations create a condition hazardous to the public, Contractor must furnish, erect, and maintain such Temporary Fencing, barricades, lights, signs, and other devices as are necessary for direction of the public or to avoid accidents, damage, or injury to the public. Contractor must furnish such flagmen and guards as are necessary to direct the public or to give adequate warning of any hazardous conditions.

6.2.6. During construction, Seller and Buyer shall work cooperationally to minimize impact on Buyer’s parking spaces.

6.3. PROTECTION AND RESTORATION OF PROPERTY

6.3.1. Contractor must immediately repair any damage, arising from or in consequence of the performance of the Contract, to improvements or property, whether above or below the ground, private or public, within or adjacent to the Project.

6.3.2. In an Emergency affecting the safety of life or property, including adjoining property, Contractor must act at its discretion, with notice to Buyer, to prevent such threatened loss or injury. Contractor must maintain adequate protection against damage to life and property involved in Project and on property adjacent.

6.4. PRESERVATION OF CULTURAL RESOURCES

6.4.1. Pursuant to the National Historic Preservation Act of 1966, State laws and County ordinances, the following procedures are implemented to ensure historic preservation of cultural resources discoveries.
6.4.2. In the event potentially historical, architectural, archaeological or cultural resources (hereinafter "resources") are discovered during subsurface excavations at the Project Site, the following procedures apply:

6.4.3. Contractor to temporarily suspend all operations at the location of such potential resources.

6.4.4. A qualified Consultant must be utilized to assess the value of such resources and make recommendations.

6.4.5. If the Consultant determines that the potential find is indeed a cultural resource, Buyer will, as expeditiously as possible, advise Contractor in writing of the action to be taken regarding the find, and the anticipated time frame and extent of any Work suspension.

6.5. Buyer’s Building Official (“Building Official”) Approval

○ REFERENCES
  - California Building Code Section 1.08 Inspections
  - California Building Code Chapter 17 Structural Tests and Inspections

○ OVERVIEW
  - Construction of the building must comply with References A and B. The Contractor’s Work, including submission of Contractor-required designs and calculations, and actual on-site Work, is subject to approval by the Buyer’s Building Official (“Building Official”). The Contractor’s Work is subject to code-compliance inspections by the Building Official, pursuant to References A and B. These inspections are for code compliance only and do not relieve the Contractor from performing all work required.
  - The Contractor must obtain all Permit and subsequent revisions as needed prior to construction work.

○ FEES
  - All Plan Check and Building Permit fees as well as all trade permit fees, i.e.: plumbing, electrical, mechanical, etc., will be paid for by the Contractor directly to the Building Official.

○ EXECUTION
  - No work shall commence until the Contractor has secured from the Building Official and posted a Building Permit Record Card at the jobsite. This card shall be maintained available at the jobsite by the Contractor until the project has been signed off as “complete” by the Building Official or his designated representative. A sample card has been included at the end of this section.
  - Work shall not proceed beyond the point indicated in each successive milestone section of the Building Card without obtaining the approval of the Building Official. The Building Official, when requested by the Buyer, shall make the requested inspections and shall indicate that portion of the Work that is satisfactory as completed, or shall notify the Contractor wherein the same fails to comply with the CBC or other related Code. Any portions that
do not comply shall be corrected by the Contractor at the Contractor’s expense, and a request for re-inspected made.

- The process of obtaining Building Official approval of specific Work takes place as follows:
  - The Contractor shall inspect the Work prior to requesting inspection by Building Official.
  - The Contractor will request and coordinate the inspection by Building Official.
  - The Contractor shall notify the Buyer’s project representative to be present at the time of inspection by the Building Official.

- Special Inspections. In addition to the inspections specified above, the Contractor is responsible for contracting for Special Inspection Services to provide inspections during construction as delineated in the California Building Code, Chapter 17 and the Contract Documents, specifically, but not limited to Division 1, Section 01450. All costs for these Special Inspections will be included in the Contractor’s Proposal for the performance of the Work.

7. COMMISSIONING REQUIREMENTS

7.1 DEFINITIONS

- Startup: The initial starting or activating of dynamic equipment. Refers to the equipment manufacturer’s field quality control process and procedures required to activate equipment.

- System(s): Group of components and equipment functioning as a unit or performing a common function. (i.e. automatic transfer switch, meter test, controls, etc.).

- System Components: Equipment that act/operate “individually” but are essential to the operation of a System.

- Test Equipment Calibration Certifications: reports of traceable calibration of test equipment to industry standards by certified agencies.

- Test Procedures: The step-by-step process which must be executed to test the performance of a given set of functions and/or operational modes.

- Test Requirements: Requirements specifying what modes and functions, etc. shall be tested.

7.2 GENERAL

- Systems and equipment shall be commissioned in order to achieve the following specific objectives:
  - Verify and document that equipment is installed, started, and operates properly pursuant to the requirements of the contract and manufacturer’s specifications, instructions and recommendations.
- Identify deficient systems, equipment and/or installations as early as possible to facilitate timely corrective action minimizing schedule impact.

- Verify and document that equipment and systems receive complete operational checkout by installing contractors, vendors and manufacturers.

- Verify and document equipment and system performance.

- Verify completeness of Operations and Maintenance.

- The commissioning process does not reduce the responsibility of the Contractor or Vendor to perform and complete all Work in accordance with the requirements of the Contract.

7.3 COMMISSIONING TEAM Commissioning process should be defined by the Owner - Borrego

- It is the intent that all members of the Commissioning Team cooperate with each other to fulfill their individual responsibilities and support the overall commissioning process.

- The Commissioning Team consists of:
  - Buyer representatives
  - Seller and Seller’s commissioning authority

7.4 COMMISSIONING PROCESS

- The following activities describe the key, sequential tasks in the Commissioning process. This list is not all-inclusive:
  - Initial Commissioning Scope Meeting: All members of the Commissioning Team involved in the commissioning process meet to review the scope of work, tasks, schedules, deliverables, and responsibilities for creation and implementation of the Commissioning Plan.

7.5 CONTRACTOR’S COMMISSIONING RESPONSIBILITIES

- The following is a general summary of the Contractor’s overall responsibilities:
  - The Contractor has overall responsibility to ensure Acceptable Performance of all systems to be commissioned defined in this Section.

7.6 EXECUTION

- Acceptance Documentation: A copy of the accepted Functional performance test results certified by the contractor, as meeting the specifications for each system or piece of equipment shall be included within each copy of the Corrected Final Operations and Maintenance manuals.

7.7 FUNCTIONAL PERFORMANCE TESTING

- The Seller shall develop the Functional Performance Tests Plan (FPTP) and associated Functional Performance Tests (FPT).
• The controls system and SC it controls shall not be fully functionally tested until all points have been calibrated and pre-functional checklists are completed.

• Functional Performance Testing will require that the Contractor operate Systems through a full range of checks and tests in order to determine if SC and Systems, and interfaces between Systems, function in accordance with the contract documents. In this context, “function” includes:
  - All modes and sequences of control operation;
  - Starting, stopping, and proper operations;
  - Compliance with all specified responses to emergency conditions.

7.8 COMMISSIONING ACCEPTANCE PROCEDURES

• Contractor must notify the Buyer at least fourteen (14) calendar days prior to starting Functional performance tests.

• Upon successful completion of the Performance Period and all other required items, Contractor certifies the Work is complete in accordance with Contract.

7.9 NON-CONFORMANCE

  o If acceptable performance is not achieved:
    • If there is no dispute on the deficiency and the responsibility to correct it:
      • Contractor documents the deficiency and the adjustments or alterations required to correct it.
      • Contractor corrects the deficiency and notifies the Buyer/CxA that the equipment is ready to be retested.

7.10 OPERATIONS & MAINTENANCE DATA

• The Contractor shall compile O&M Documentation for each piece of equipment or System and maintain one copy and submit two copies to the Buyer.

7.11 FINAL COMMISSIONING TEST DOCUMENTATION should be defined by Owner - Borrego

• As a condition of achieving Milestone Completion, the Contractor’s CQCM shall compile and submit a Final Report containing all documents generated throughout the Commissioning process, to include: Completed and signed Pre-functional Tests, organized by system; completed and signed Functional Tests, organized by system; completed and signed Performance Period Testing reports, organized by system; Final Commissioning Issues Log; TAB reports; Commissioning meeting minutes. The Report shall be submitted in binders, each not more than 2 inches thick. Each binder shall have a table of contents and have labeled tabs separating the categories of the report.

SYSTEMS/SC TO BE COMMISSIONED

(iv) FIRE PROTECTION

☐ ☐ All other necessary to fully comply with the performance of the system
(v) **ELECTRICAL**

☐ Electrical Metering, Monitoring, and Control Systems

☐

☐

☐ All other necessary to fully comply with the performance of the system

8. **CONSTRUCTION SCHEDULE**

8.1. **Time.** Time is of the essence in Seller’s performance and completion of the Work, and Contractor shall diligently prosecute the work and complete it within the time provided in the Contract Schedule (“Contract Time”).

8.2. Contractor shall complete the Work, in strict compliance with all requirements of the Power Purchase Agreement and this Exhibit 5 within the Contract Time.

8.3. **Schedule.** Contractor shall submit a Construction Schedule in conformance with the terms of the Agreement.

8.4. **Delay and Extensions of Contract Time.** The Contract Time may be extended if Contractor encounters an unavoidable delay in performing the Work due to causes completely beyond Contractor’s control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence (“Excusable Delay”). Grounds for Excusable Delay may include, but are not limited to, fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or unusually severe weather. Excusable Delay does not include delay caused by (a) weather conditions which are normal for the location of the Project, according to the U.S. Weather Bureau Records, (b) Contractor’s failure to order equipment and materials sufficiently in advance of the time needed for the Work, (c) Contractor’s failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work, (d) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite and/or review of the Contract Documents, (e) Contractor’s financial inability to perform the Work, e.g., insufficient funds to pay its Subcontractors or suppliers.
Exhibit 6
Contract Price

Morgan Hill Police Department and Aquatics Center Generating Facility:

The kWh Rate with respect to each of the Generating Facilities under the Agreement shall be as follows: $0.201 cents per kilowatt hour in Year 1 of the Term with an annual escalator of three percent (3%).
Exhibit 7
Operations Forecasts, Scheduling Protocols, & Monitoring

OPERATIONS FORECASTS, SCHEDULING PROTOCOLS and MONITORING

1 Twenty Year Forecast
1.1 No later than ninety (90) days after the Commercial Operation Date of each Generating Facilities, Seller will provide a twenty year forecast of expected daily generation for each Generating Facilities.
1.2 Buyer may request modification to the Annual Operations Forecast at any time, and Seller shall use good faith efforts to accommodate Buyer’s requested modifications.
1.3 Seller shall not conduct planned Outages at times other than as set forth in its Annual Operations Forecast, unless approved in advance by Buyer, which approval shall not be withheld or delayed unreasonably.

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

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

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

5 Notices
5.1 All Schedules, Schedule changes, Forced Outages, and planned outages are to be submitted to Buyer by fax or email to the following persons: Mr. Lin Ortega and Mr. Siva Darbhamulla.

6 Meters, Communications, and Meteorological Station Requirements and Monitoring

6.1 Metering
Proposers shall install utility-grade revenue, electronic, bi-directional meter per this Agreement. It should be capable of recording for each 15-minute interval demand (KW), energy (kWh), reactive power (KVAR), and other power quality metrics to measure the AC output of each inverter, and at the delivery point to the facility’s electrical system.
The meter must meet all CSI rebate requirements and Local Utility requirements.

6.2 Data Acquisition System (DAS), Metrological Station Requirements and Monitoring:
The Seller shall provide a turnkey data acquisition and display system (DAS) that allows Buyer to monitor, analyze and display historical and live solar electricity generation data on the Web. The DAS shall meet all of the requirements of the California Solar Initiative (CSI) program and include instrumentation that allows the measurement of:
• Instantaneous system output in kW
• Instantaneous irradiation in watts/square meter.
• Instantaneous ambient temperature in degrees Fahrenheit
• Instantaneous wind speed (meters/second)
• Daily and year-to-date system output in kWh

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

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

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

For the life of the agreement, the actual kWh produced will be compared to the potential kWh given metered solar radiation and the expected degradation of the PV system over time. This information will be monitored on a monthly basis.
Exhibit 8
Expected Contract Quantity Form

Estimated Annual Production for the Morgan Hill Police Department and Aquatics Center Generating Facility, commencing on the Commercial Operation Date under the Agreement shall be as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Aquatic Center</th>
<th>Police Department</th>
<th>TOTAL</th>
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<tr>
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<td>420,270</td>
<td>417,130</td>
<td>837,400</td>
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<td>2</td>
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<td>820,777</td>
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Exhibit 9
Form of Attestation

FORM OF ATTESTATION

Environmental Attribute Attestation and Bill of Sale

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

Facility name and location: ________________________________
Project Name: _______________________________________
EIA ID #: __________________________________________
CEC ID#: __________________________________________
ISO Meter ID#: ______________________________________
Fuel Type: ____________________________________________
Capacity (MW): ______________________________________
Commercial Operation Date: ____________________________

<table>
<thead>
<tr>
<th>Dates</th>
<th>MWhs generated</th>
<th>Dates MWhs generated</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

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

1. To the best of its knowledge, the information provided herein is true and correct;

2. This transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;

3. The Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

(Check one)

______ Seller owns the facility.

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

Contact Person: Name: ___________________________ Phone: ___________________________

WITNESS MY HAND,

Seller: __________________________________________

By: __________________________________________

Title: __________________________________________

Date: __________________________________________
Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

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

D. Insurance Required

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

2. **General liability coverage shall include:**
   a. Premises and Operations
   b. Personal Injury liability
   f. Severability of interest

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

   **Additional Insured Endorsement**, which shall read:

   “City of Morgan Hill, and members of the City Council of the City of Morgan Hill, and the officers, agents, and employees of the City of Morgan Hill, individually and collectively, as additional insureds.”

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

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

5. **Workers' Compensation and Employer's Liability Insurance**

   a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

   b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. **Professional Errors and Omissions Liability Insurance**

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

   b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars ($50,000) per occurrence/event.

   c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. **Claims Made Coverage**

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

   a. Policy retroactive date coincides with or precedes the Seller's start of work (including subsequent policies purchased as renewals or replacements).

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

E. **Special Provisions**

   The following provisions shall apply to this Agreement:

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

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

3. Should any of the work under this Agreement be sublet, the Seller shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Seller may insure subcontractors under its own policies.

4. Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined above.
B1 - CONSTRUCTION PHASE INSURANCE REQUIREMENTS

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

C. Notice of Cancellation

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

1. **Commercial General Liability Insurance** - for bodily injury (including death) and property damage which provides limits as follows:
   
a. Each occurrence - $2,000,000

b. General aggregate - $4,000,000

c. Products/Completed Operations aggregate ** - $4,000,000

d. Personal Injury - $2,000,000

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

2. **General liability coverage shall include:**

   a. Premises and Operations

   b. **Products/Completed Operations with limits of four million dollars ($4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by Buyer.**

   c. Contractual Liability expressly including liability assumed under this Agreement. If Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.

   d. **Personal Injury liability**

   e. Owners' and Sellers' Protective liability

   g. Severability of interest

   g. Explosion, Collapse, and Underground Hazards (X, C and U)

   h. Broad Form Property Damage liability

3. **General liability coverage shall include the following endorsements, copies of which shall be provided to Buyer:**

   a. **Additional Insured Endorsement**, which shall read:
“City of Morgan Hill, and members of the City Council of the City of
Morgan Hill, and the officers, agents, and employees of the City of
Morgan Hill, individually and collectively, as additional insureds.”
Insurance afforded by the additional insured endorsement shall apply
as primary insurance, and other insurance maintained by the City of
Morgan Hill, its officers, agents, and employees shall be excess only
and not contributing with insurance provided under this policy.
Public Entities may also be added to the additional insured
endorsement as applicable and the contractor shall be notified by the
contracting department of these requirements.

b. **Contractual Liability Endorsement:**

Insurance afforded by this policy shall apply to liability assumed by the
insured under written contract with the City of Morgan Hill.

c. **X C & U (Explosion, Collapse and Underground) Endorsement:**

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. **Claims Made Coverage**

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

a. Policy retroactive date coincides with or precedes Seller's start of work
(including subsequent policies purchased as renewals or replacements).

b. **Seller will make every effort to maintain similar insurance during the
required extended period of coverage following project completion, including
the requirement of adding all additional insureds.**

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

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

5. **Automobile Liability Insurance**

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

6. **Workers' Compensation and Employer's Liability Insurance**
a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

7. Sellers' Equipment Insurance

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

E. Special Provisions

The following provisions shall apply to this Agreement:

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

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

3. Should any of the work under this Agreement be sublet, the Seller shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Seller may insure subcontractors under its own policies.

4. Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined above.
B5 – INSURANCE REQUIREMENTS FOR LEASE AGREEMENT

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

D. Notice of Cancellation

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

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
   a. Each occurrence - $2,000,000
   b. General aggregate - $4,000,000
   c. Personal Injury - $2,000,000

2. General liability coverage shall include:
   a. Premises and Operations
   b. Personal Injury liability
h. Severability of interest

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

Additional Insured Endorsement, which shall read:

"City of Morgan Hill, and members of the City Council of the City of Morgan Hill, and the officers, agents, and employees of the City of Morgan Hill, individually and collectively, as additional insureds."

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

4. Automobile Liability Insurance

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

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. Property Insurance

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