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POWER PURCHASE AGREEMENT

REGIONAL POWER PURCHASE AGREEMENT BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND
SOLAR STAR CALIFORNIA XXI, LLC

This Regional Power Purchase Agreement is dated as of February 16, 2011, ("Effective Date") and is witnessed, acknowledged, and executed by authorized representatives of Solar Star California XXI, LLC, a Delaware limited liability company ("Seller"), and Santa Clara Valley Transportation Authority, a California public entity created by the California State Legislature pursuant to Section 100000 of the Public Utilities Code ("Buyer" and, together with Seller, each, a "Party" and together, the "Parties"), as evidenced by their signature on the last page of this document.

REQUITALS

A. Buyer wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
B. Buyer has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation led by the County of Santa Clara;
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 buyers;
D. Buyer has selected Seller to design, construct, own and operate three solar PV generating systems to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
E. Seller intends to construct, own, and operate renewable energy-powered generating facilities that shall qualify as an eligible renewable energy resource under the State of California Renewable Portfolio Standard 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; and
F. Buyer desires to purchase electricity generated by Seller’s generating facility, together with all Environmental Attributes (as defined below) 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 Commercial Operation Date" means, with respect to each Generating Facility, the date on which Commercial Operation first occurs.

1.2 "Adjusted Delivered Energy" means, with respect to each Generating Facility, the sum of (i) the Delivered Energy from the Generating Facility and (ii) any Energy that would have been delivered during a Dispatch Down Period if the Seller had not been directed to reduce the Delivered Energy from the Generating Facility.
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1.3 “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

1.4 “Agreement” means this Regional 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.

1.5 “Annual Escalation Adjustment” means, with respect to a Generating Facility, the three percent (3%) 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).

1.6 “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, 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.

1.7 “Bankruptcy Event” means with respect to a Party, that either:
   (a) such Party has: (i) 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; (ii) admitted in writing its inability to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v) 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 (vi) 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: (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; or (ii) 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.

1.8 “Base Contract Price” means the price in $U.S. per kWh to be paid by Buyer to Seller for the purchase of the Output, as specified in Article 4 and Exhibit 6 (Contract Price).

1.9 “Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in San Jose, California are required or authorized by Applicable Law to be closed for business.

1.10 “Buyer Default” has the meaning set forth in Section 10.3.

1.11 “Buyout Date” means the amount set forth in Section 2.2.

1.12 “Buyout Price” means the amount set forth in Section 2.2.

1.13 “Buyer” has the meaning set forth in the preamble.
POWER PURCHASE AGREEMENT

1.14 “Buyer Address for Notices” means the addresses to which notices to the Buyer should be sent as set forth in Article 15.

1.15 “California Solar Initiative” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the PUC and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Resources Code.

1.16 “Commercial Operation” means that, with respect to a Generating Facility: (i) the Generating Facility has been constructed in accordance with Prudent Industry Practice, all permits, Applicable Law, the specifications set forth in Exhibit 2 (Description of Generating Facilities), Exhibit 4 (Technical and Warranty Requirements) and Exhibit 5 (Engineering & Construction Requirements), (ii) Seller has successfully completed the Commissioning Tests and (iii) Buyer has obtained from the Local Electric Utility an Interconnection Agreement.

1.17 “Commissioning Tests” means the tests set forth in Exhibit 5 (Engineering & Construction Requirements).

1.18 “Commencement of Work Date” means the date on which Seller begins the physical construction work at the Premises of any one of the Generating Facilities which is the subject of this Agreement.

1.19 “Contract AC Power Rating” means, with respect to a Generating Facility, the AC power rating for the Generating Facility in a given Contract Year, as specified in Exhibit 8 (Expected Contract Quantity Form).

1.20 “Contract Capacity” means, with respect to a Generating Facility, the maximum instantaneous output of the Generating Facility in kilowatts measured at the Delivery Point.

1.21 “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 for a Generating Facility shall commence on the Actual Commercial Operation Date and end on the following December 31st, and the last Contract Year for a Generating Facility shall end on the relevant anniversary of the Actual Commercial Operation Date as set forth in Section 2.2.

1.22 “CSI” has the meaning set forth in Section 3.1.

1.23 “Days” unless otherwise specified, shall mean calendar days.

1.24 “Delivered Energy” means, with respect to a Generating Facility, the amount of Energy delivered to the Delivery Point, adjusted to reverse the application of distribution loss adjustments, if any, from the amount of Metered Energy. For example, if distribution losses are programmed into the Meter by applying a factor of 0.99 to reflect a reduction in output of 1%, the Metered Energy would be divided by 0.99 to obtain the Delivered Energy. Conversely, if distribution losses are programmed into the Meter by applying a factor of 1.01 to reflect an increase in output of 1%, the Metered Energy would be divided by 1.01 to obtain the Delivered Energy.

1.25 “Delivery Point” means the metering point at the low side of the transformer for each Generating Facility, at the output of each inverter, as specified in Exhibit 2 (Description of Generating Facilities).

1.26 “Dispatch Down Period” means any period of time during which (a) the Local Electric Utility orders a curtailment that affects any Generating Facility, for reasons which do not constitute a Force Majeure or (b) there is scheduled or unscheduled maintenance on the Transmission System.
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that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at any Delivery Point.

1.27 “Effective Date” has the meaning set forth in the preamble.

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

1.29 “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 include, but are 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 and Green Tag Reporting Rights.

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

1.31 “Existing Financial Incentives” means (i) incentive tax credits (including investment tax credits arising under the Internal Revenue Code) and any tax deductions or other benefits, or grants in lieu thereof (including without limitation monetization of tax 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 other than Environmental Attributes.

1.32 “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).

1.33 “Expected Commercial Operation Date” means, with respect to a Generating Facility, the date on which the Parties expect the Generating Facility to achieve Commercial Operation, established in accordance with Section 3.4.

1.34 “Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Seller (or an Affiliate of Seller) with respect to the Generating Facilities.

1.35 “FMV” has the meaning set forth in Section 2.2.

1.36 “Force Majeure Event” has the meaning set forth in Article 9.
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1.37 "GAAP" means Generally Accepted Accounting Principles.

1.38 "Generating Facilities" means 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.

1.39 "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.

1.40 "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, 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 Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law or regulation or bill, or any international or foreign emissions trading program. "Green Tags" are accumulated on an MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

1.41 "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; (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, waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.42 "Initial Synchronization" means, with respect to a Generating Facility, the date upon which the Generating Facility is first synchronized with the Transmission System.

1.43 "Initial Term" has the meaning set forth in Section 2.1.

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

1.45 "Interconnection Agreement" means (a) 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 and (b) any other interconnection agreements between Buyer and the Local Electric Utility.

1.46 "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.

1.47 "Interest Rate" means the interest rate applicable for refunds calculated pursuant to 18 C.F.R. Section 35.19a of the FERC Regulations, as that section may be amended or superseded from time
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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.

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

1.49 "ISO" means the California Independent System Operator, charged with operating a majority of the
California high-voltage wholesale power grid.

1.50 "Kiosk" means the viewing station for the Buyer and the general public to view the production of
electricity of the Generating Facilities as defined in Section 4.1(c)(i)(1).

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

1.52 "Lease" means, with respect to each Site, a lease substantially in the form of Exhibit 10 (Form of
Lease Agreement), which is to be executed by Seller and the Buyer for use of such Site for the
construction and operation of the applicable Generating Facility.

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

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

1.55 "Mechanical Completion" means when (i) installation of all necessary components and systems of
the Generating Facilities (except for completion of painting, final grading, and similar portions of
the construction work not affecting the operability, safety, or mechanical and electrical integrity of
the Generating Facilities) has been completed; (ii) the Generating Facilities are mechanically and
electrically sound; and (iii) the Generating Facilities are ready for initial operation, adjustment, and
testing.

1.56 "Meter" means a physical metering device, 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.

1.57 "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.

1.58 "Milestones" means 100% design approval, Commencement of Work Date, Mechanical
Completion and Actual Commercial Operation Date.

1.59 "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 4. The Monitoring System shall meet or
exceed PG&E monitoring and reporting standards.

1.60 "MW" means one megawatt of electric energy.

1.61 "MWh" means one MW supplied for one hour.
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1.62 “Outage” means, with respect to a Generating Facility, a physical state in which all or a portion of the Generating Facility is unavailable to provide Energy to the Delivery Point, including any reduction in the capacity of the Generating Facility, whether planned or unplanned.

1.63 “Output” means, with respect to a Generating Facility, (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.

1.64 “Parties” means Buyer and Seller, and both such Parties’ respective successors and permitted assignees.

1.65 “Party” means Buyer or Seller, and any of each such Party’s respective successors and permitted assignees.

1.66 “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.

1.67 “Person” means an individual, corporation, partnership, a joint venture or other form of business association.

1.68 “PG&E” means the Pacific Gas and Electric Company, a subsidiary of PG&E Corporation.

1.69 “Preliminary Requirements” has the meaning set forth in Article 3.

1.70 “Premises” means the premises described in Exhibit 3 (Site Description).

1.71 “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) are commonly used in the State of California in prudent electrical engineering and operations to operate electric utility equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, 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.

1.72 “Purchase Option” has the meaning set forth in Section 2.2.

1.73 “Renewal Term” has the meaning set forth in Section 2.1.

1.74 “Reporting Rights” means all rights to report ownership of the Environmental Attributes or Existing Financial Incentives, as applicable, to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereof.

1.75 “Seller” has 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.

1.76 “Seller Default” has the meaning set forth in Section 10.1.

1.77 “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.
POWER PURCHASE AGREEMENT

1.78 "Site" means each location of each applicable Generating Facility at the Premises, as specified in the applicable Lease.

1.79 "Standards" has the meaning set forth in Section 3.9.

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

1.81 "Term" has the meaning set forth in Section 2.1.

1.82 "Termination Values" means the value or values, as applicable, set forth in Exhibit 1 (Termination Values), payable under the circumstances described in Section 2.3.

1.83 "Test Energy" means, with respect to a Generating Facility, Metered Energy generated by the Generating Facility prior to the Actual Commercial Operation Date of such Generating Facility.

1.84 "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 or PG&E.

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

ARTICLE 2: EFFECTIVE DATE, TERM

2.1 Term.

The term of the Agreement shall commence on the Effective Date and, with respect to each Generating Facility, shall continue for twenty (20) years from the Actual Commercial Operation Date of such Generating Facility ("Initial Term" and together with any Renewal Terms, the "Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for additional five year terms (each a "Renewal Term" and collectively the "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 or then current Renewal Term, as applicable, and the Seller provides written consent to the renewal within sixty (60) days of the date of the request. The Parties shall confer and agree on a schedule for the Price, Escalation Rate, Terminal Values, as well as the Expected Annual Contract Quantity for any Renewal Term. Except as agreed by the Parties, the remainder of the terms and conditions shall remain the same for each Renewal Term as for the Initial Term. 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 or then current Renewal Term, as applicable. 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, Termination Values, and Expected Annual Contract Quantity for the Renewal Term, Buyer shall confirm to Seller in writing its intent to proceed with its option to renew. In the event Buyer does not provide such confirmation, the provisions of the Agreement shall be
POWER PURCHASE AGREEMENT

applicable as if Buyer had not exercised the renewal option. Upon expiration of the Initial or any Renewal Term, Seller shall cause the applicable Generating Facility to be removed from Buyer’s premises pursuant to Article 10.4.

2.2 Buyer’s Purchase Option.

So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase (the “Pursue Option”) any one, any two or all three of the Generating Facilities for a purchase price (the “Buyout Price”) equal to the greater of (a) the fair market value of the Generating Facility or Generating Facilities Buyer intends to purchase, which would be 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 (“FMV”) or (b) the sum of the applicable Termination Values set forth in Column 1 of Exhibit 1 for the Generating Facilities Buyer intends to purchase, upon the seventh (7th), tenth (10th) and fifteenth (15th) anniversary of the Actual Commercial Operation Date of the applicable Generating Facility. If Buyer chooses to exercise the Purchase Option, the following steps shall be followed by the Parties:

(a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the applicable Generating Facility or Generating Facilities on a date certain. The date that is two hundred and forty (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 2.2(a), the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the 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 applicable Generating Facility or 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 no later than sixty (60) days from the date of notice referred to in Article 2.2(a). Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall 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 applicable Generating Facility or 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 applicable Generating Facility or 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 applicable Generating Facility or Generating Facilities. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.
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(d) No later than sixty (60) days after determination of the FMV of the applicable Generating Facility or Generating Facilities, Buyer shall confirm to Seller in writing of its intent to proceed with its Purchase Option at the Buyout Price, which shall be the greater of (i) FMV, as determined pursuant to this Article 2.2, and (b) the applicable Termination Value. 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 Purchase Option as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the applicable Generating Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (B) assign all warranties for the applicable Generating Facility or 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 applicable Generating Facility or Generating Facilities the Agreement shall terminate automatically and Buyer shall own the applicable Generating Facility or Generating Facilities and all Environmental and Financial Attributes relating to the applicable Generating Facility or 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 4 accruing from and after the Buyout Date. Seller shall provide all reasonable 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 applicable Site.

2.3 Termination.

This Agreement may be terminated, as to each or all of the Generating Facilities, as provided in Section 8.3, Section 10.1(b) and Section 10.2(b). In the event of a termination under Section 10.2(b), Buyer shall pay to Seller, as liquidated damages, the applicable Termination Value set forth in Column 2 of Exhibit 1, and Seller shall cause the applicable Generating Facility to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days after the notice of termination from Buyer, Seller shall remove the applicable Generating Facility and shall remediate and restore the Premises to the condition preceding the installation of the applicable Generating Facility as set forth in Section 10.4. For the avoidance of doubt, a termination of this Agreement as to one individual Generating Facility shall not be deemed to be a termination of the Agreement as to the other Generating Facilities.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

3.1 All elements of engineering and construction of the Generating Facilities and compliance with all California Solar Initiative ("CSI") requirements are Seller’s responsibility.

3.2 Seller shall provide services as described herein and pursuant to Exhibit 5 (Engineering and Construction Requirements).

3.3 Seller shall provide a schedule for the Milestones to the Buyer to complete all Work in this Agreement as soon as practicable, but no later than thirty (30) days after providing the Expected Commercial Operation Date in accordance with Section 3.7(f) below.
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3.4 Seller shall provide monthly status reports throughout this phase, as well as any additional briefing requested by Buyer.

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

3.6 CEQA Compliance.

(a) Compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq., is a condition precedent to Buyer’s obligations under this Agreement. Seller shall not have any right to install the Generating Facilities until Buyer has fully complied with CEQA, issued a statement to Seller attesting to the fact that Buyer has fully complied with CEQA as it relates to each Generating Facility included in the Agreement, and issued a notice to proceed to Seller. Seller understands and agrees that Buyer shall have no obligation or liability under this Agreement should Buyer exercise its discretion to not proceed with the Agreement under CEQA. Buyer agrees to begin the initial analysis pursuant to CEQA within ten (10) days after the Effective Date. If that analysis indicates that an exemption or negative declaration will suffice, then Buyer shall proceed to complete the exemption or negative declaration in accordance with Applicable Law. Seller shall promptly reimburse Buyer for Buyer’s costs for such analysis and completion of exemption or negative declaration, including the costs to file such exemption or negative declaration, up to a maximum cost of $10,000 for all applicable Generating Facilities that Seller intends to construct on the Premises, no later than thirty (30) days after Buyer sends an invoice to Seller. The Parties shall promptly proceed to perform their obligations under this Section. If Buyer determines that the costs for such analysis and completion of exemption or negative declaration for all applicable Generating Facilities will 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 and Buyer does not decide to incur such costs, then Buyer shall terminate this Agreement either in whole or with respect to one or more Generating Facilities, and except with respect to Section 3.7(d) below, neither Party shall have any liability to the other Party (other than any liabilities as have accrued prior to such termination) with respect to each such Generating Facility.

(b) If Buyer, in its sole 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 an MND or EIR is required to comply with CEQA and the estimated cost to comply with CEQA for each applicable Generating Facility. Unless Seller issues Buyer a written statement signed by an authorized representative of Seller agreeing to bear all of the estimated cost to comply with CEQA within thirty (30) days of receipt of Buyer’s written statement or Buyer decides to bear such costs, then Buyer shall terminate this Agreement in whole or with respect to one or more Generating Facilities, and except with respect to Section 3.7(d) below, neither Party shall have any liability to the other Party (other than any liabilities as have accrued prior to such termination) with respect to each such Generating Facility.
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(c) The Parties hereby agree that the ability to terminate this Agreement in accordance with clauses (a) and (b) shall expire upon one hundred and twenty (120) days after the Effective Date.

3.7 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) Prior to the execution of this Agreement, the Seller must comply with the Insurance Requirements for design phase included as Section B3A (Design Phase Insurance Requirements) of Exhibit 9 (Insurance Requirements) attached to this Agreement.

(b) Within ninety (90) days after the Effective Date, Seller must provide Buyer with a geotech report for each Site for the construction, installation, and ongoing operation of the Generating Facilities and, based on such inspection and report, Seller must have provided one or more written notice to Buyer that the Site or Sites are adequate for purposes of proceeding with construction of the Generating Facilities. If Seller provides notice that the Site or Sites are inadequate for purposes of proceeding with construction of the Generating Facilities, the Buyer can either (i) terminate this Agreement pursuant to Section 3.7(c) or (ii) elect an alternative location in accordance with Section 3.9(c) below, in either case within one hundred and twenty (120) days after the Effective Date.

(c) Buyer’s Right to Terminate: Buyer may terminate this Agreement in accordance with Sections 3.6(c) or 3.7(b), and except as provided in this clause (c), without penalty, liability or expense of any kind to Buyer, by providing to Seller a written notice of termination. If this Agreement is terminated in whole or with respect to one or more Generating Facilities in accordance with this clause (c), Buyer shall reimburse Seller for its expenses with respect to its obligations to proceed with Engineering and Design phase work described in this Section 3.7 in an amount not to exceed one hundred thousand dollars ($100,000).

(d) Seller’s Right to Terminate: If Seller fails to obtain a financing commitment for construction of the Generating Facilities within one hundred and twenty (120) days from the Effective Date, Seller may terminate the Agreement as to an individual Generating Facility if Seller is unable to obtain financing for the applicable Generating Facility after having made commercially reasonable efforts to do so without penalty, liability or expense of any kind to Buyer, by providing to Buyer a written notice of termination no later than five (5) Days after the deadline for completion of such financing (and if Seller is unable to obtain financing and decides not to terminate the Agreement and to perform under the Agreement, Seller shall provide notice to Buyer of such decision within such five (5) Day deadline). If the financing commitment is conditioned on any assignment to the Lender of an interest in this Agreement or the Leases, the assignee shall agree to comply, without modification, with the terms and condition of this Agreement and the Leases.

(e) Seller must comply with all requirements set forth in Exhibit 5 (Engineering & Construction Requirements).

(f) Seller shall notify the Buyer in writing of the Expected Commercial Operation Date of each Generating Facility on or prior to one hundred and twenty (120) days after the Effective Date.
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(g) Each Party, upon request of the other Party, shall furnish current certificates evidencing that the insurance coverages required under Section B3A of Exhibit 9 (Insurance Requirements) is being maintained.

(h) Seller and Buyer shall execute the Lease on or prior to the Commencement of Work Date.

(i) Seller must submit seventy-five percent (75%) and final one hundred percent (100%) detailed engineering drawings and specifications for the Generating Facilities to Buyer for approval in accordance with the project schedule required by Section 3.3 above. Buyer shall review and provide its written approval of such final engineering drawings and specifications for the Generating Facilities within seven (7) days from receipt by Seller. If Buyer fails to provide approval, objections and/or comments within such seven (7) day period, such drawings and specifications shall be deemed approved by Seller. Seller shall incorporate or respond to Buyer’s comments as appropriate under the circumstances, within fourteen (14) days.

3.8 Construction Phase:

(a) Prior to the Commencement of Work Date, Seller must comply with the Insurance Requirements for construction phase included as Section B1 (Construction Phase Insurance Requirements) of Exhibit 9 (Insurance Requirements) attached to this Agreement.

(b) Seller will cause each System to be designed, engineered, installed and constructed substantially in accordance with this Agreement (including Exhibit 5 (Engineering and Construction Requirements)) and all Applicable Law, including but not limited to, the payment of prevailing wages, if applicable, and at Seller’s sole cost (unless otherwise provided herein). All construction of the applicable Generating Facilities, including but not limited to, any Site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of photovoltaic systems, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Prior to the commencement of construction on any applicable Generating Facility, Seller shall deliver to Buyer for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, a complete set of plans and specifications relating to the installation of the applicable Generating Facilities, which shall comply with all applicable uniform construction codes (including the California Building Code). Buyer shall be deemed to have approved such plans and specifications if Buyer fails to transmit notice of disapproval within seven (7) days from the date that Seller delivers the plans and specifications to Buyer. Buyer shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Seller is adhering to the specifications provided for in Exhibit 5 (Engineering and Construction Requirements) to this Agreement.

(c) Seller shall provide to Buyer a construction schedule and safety plan.

3.9 Changes. Exhibits 2, 4 and 5 set forth the standard assumptions made by Seller regarding Site conditions, electrical conditions and Generating Facility attributes for each Generating Facility under this Agreement (the “Standards”). The Standards are such that the described items for a given Generating Facility will not need repair, replacement, modification or construction beyond that described in the Exhibits in order for Seller to properly construct and install such Generating Facility. If the construction and installation of any Generating Facility is required for any reason to deviate from the Standards and/or the estimated maximum cost allocated to CEQA in Section 3.6, Seller will notify Buyer and provide an estimate of any incremental cost to Buyer and Buyer will
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have the option to (i) pay the incremental cost at the time the cost is incurred and billed to Buyer, (ii) pay the incremental cost over the Term through a calculated increase in the Base Contract Price, or (iii) elect an alternative location so long as (A) the Environmental Financial Incentives are financially equivalent or better than those associated with the original location and if the expected Output of the Generating Facilities and construction costs at the alternative location are equivalent to or superior than those associated with the originally proposed location. Seller shall use its commercially reasonable efforts to reasonably avoid any deviation from the Standards and to mitigate any incremental cost to Buyer.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale

(a) Commencing on the Actual Commercial Operation Date of a Generating Facility and continuing throughout the Term of such Generating Facility, 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 in accordance with Exhibit 6 (Contract Price).

(b) Seller shall only deliver to Buyer Energy and Environmental Attributes from the Generating Facilities and Seller shall not sell or transfer Output to any Person other than Buyer or authorized assignee who has succeeded Buyer.

(c) As between the Parties, at each Site, Seller will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Output up to but excluding the Delivery Point and Buyer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Output at and from the Delivery Point. Risk of loss related to Output will transfer from Seller to Buyer at the Delivery Point.

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

(e) Meters.

(i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric Utility Tariffs and the Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter in compliance with manufacturer's recommendations. 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 a Performance Monitoring and Reporting Service (PMRS) that is
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viewable by Buyer at all times. Eligible meters and PMRS Sellers must be listed as approved on the Go Solar California website.

1. Seller shall install a Kiosk which shall be sufficient to view the data acquisition system monitoring of the Generating Facilities by the general public. 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 shall not exceed $5,000 US dollars. If the cost exceeds the $5,000 then Buyer shall be responsible any cost over $5,000. The Buyer will own and be responsible for ongoing maintenance of the Kiosk.

(ii) Meter Reading and Communications Equipment. 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 not the Generating Facilities are ISO Metered Entities. Seller shall apply verification, editing and estimation techniques as recommended by the manufacturers to ensure that the meter data accurately represents actual Output and that the meters are in compliance with all applicable requirements of (i) the Local Electric Utility; and (ii) the Interconnection Agreement.

(iii) Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facilities with prior written notice to Seller 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 Interconnection Agreement.

(f) Excess Energy. Buyer shall accept delivery and pay Seller for all electricity which Seller delivers to Buyer. If the Delivered Energy of a Generating Facility exceeds the Expected Annual Contract Quantity of such Generating Facility by one hundred and ten percent (110%) on a weather-adjusted basis, Buyer shall have the option, but not the requirement, to purchase the electricity above one hundred and ten percent (110%) of the Expected Annual Contract Quantity.

(g) Test Energy. Prior to the Actual Commercial Operation Date of a Generating Facility, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay to Seller for the Test Energy in accordance with Section 4.1(a).

4.2 Monitoring System and Web Interface.

(a) Seller shall ensure that each Generating Facility has a Monitoring System.
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(b) The Monitoring System shall include, without limitation, ability to monitor Revenue grade AC production data and 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 near real time, including the energy delivered and greenhouse gas emissions reduced.

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

4.3 AC Power Rating Adjustment.

(a) Within six (6) months of the Actual Commercial Operation Date of such Generating Facility, Seller shall perform and submit to Buyer the results of a PTC Rating analysis which must demonstrate that such Generating Facility has an AC power rating of at least ninety percent (90%) of its Contract AC Power Rating.

4.4 Allocation of Costs and Risks.

(a) 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 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, at and after the Delivery Point.

4.5 Environmental Attributes.

(a) All Environmental Attributes available in connection with the Delivered Energy from the Generating Facilities are retained and owned by Buyer or its assignee. Seller shall take all reasonable measures to assist Buyer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the Generating Facilities. At Buyer’s request, Seller shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Buyer’s or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Buyer is entitled under this Agreement are changed or modified, Seller shall, at Seller’s request, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

(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 of each Generating Facility, 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 Environmental Attributes purchased hereunder belong to it.

4.6 Tax Credits; Existing Financial Incentives.

(a) All Existing Financial Incentives and associated Reporting Rights available in connection with the Generating Facilities are retained and owned by Seller or its assignee. Buyer shall take all reasonable measures to assist Seller in obtaining all Existing Financial Incentives
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currently available or subsequently made available in connection with the Generating Facilities. At Seller’s reasonable request and expense, Buyer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Seller’s or its assignee right, title and interest in and to the Existing Financial Incentives. If the standards used to qualify the Existing Financial Incentives to which Seller is entitled under this Agreement are changed or modified, Seller shall, at Seller’s request and expense, use all reasonable efforts to cause the Existing Financial Incentives to comply with new standards as changed or modified.

(b) To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Buyer, if engaged in commerce or trade, shall submit to Seller for approval any press releases regarding Buyer’s use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller, which approval shall not be unreasonably withheld or delayed. Buyer and Seller may by mutual written agreement set forth specific statements that may be used by Buyer in any press releases that address Buyer’s use of solar or renewable energy provided pursuant to this Agreement.

(c) Seller or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the Generating Facilities.

4.7 Title to System.

Except in the event of Buyer’s exercise of its option to purchase under Section 2.2, Seller, or Seller’s permitted assigns, shall at all time retain title to and be the legal and beneficial owner of all Generating Facilities, including the right to any tax credits available under federal or state law, and all Generating Facilities shall remain the property of Seller or Seller’s assigns. The Generating Facilities shall remain the personal property of Seller or Seller’s assigns and shall not attach to or be deemed a part of, or fixture to, the Sites. The Generating Facilities shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Buyer warrants and represents that it shall keep the Generating Facilities free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Seller or its creditors). Seller shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Generating Facilities in order to protect its rights in the Generating Facilities. Generating Facilities shall be clearly marked and identified as being the property of the Seller or Seller’s assigns. The Parties intend that neither Buyer nor any party related to Buyer shall acquire the right to operate any Generating Facility or be deemed to operate any Generating Facility.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment.

(a) Generally. During the Term, on a monthly basis, Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer during the prior month, in accordance with Article 4. Such payment shall be full compensation to Seller for the Output received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form reasonably acceptable to the Buyer, and must include a unique invoice number provided by Seller to 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
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other mutually agreeable method(s), to the account designated by the other Party.

(c) All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in clause (b) shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Party. Such interest shall accrue at a monthly rate equal to the lesser of the Interest Rate or the maximum interest rate permitted by Applicable Law.

5.2 Allocation of Taxes and Possessorly Interest Tax.

(a) Seller Taxes Generally. Seller shall invoice Buyer for, and Buyer shall pay (and shall indemnify and hold Seller harmless on an after-tax basis from and against) all sales Taxes, together with any interest, penalties or additions to tax payable with respect to such Taxes, unless such interest, penalties or additions to tax payable with respect to such Taxes are due to Seller’s failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Seller shall indemnify and hold Buyer harmless in such excepted cases. Seller shall be responsible for (i) Taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Output (regardless of whether such taxes are imposed on Seller or Buyer), (ii) Taxes described in clause (b) below and (iii) Taxes related to Seller’s manufacture, installation and acquisition of the System. Notwithstanding the foregoing, Buyer shall pay and hold harmless Seller from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Buyer pursuant to this Agreement.

(b) Real Estate or Property Taxes. Seller shall pay or cause to be paid all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are now or hereafter assessed, levied, charged, confirmed or imposed by any Governmental Authority on Sellers use of the Premises (or any portion or component thereof) or on Seller’s ownership or operation of the Generating Facilities.

(c) Buyer Credit for Payment of Taxes. If Buyer shall be required by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable by Buyer hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Seller shall have received an amount equal to the sum it would have received had no such deductions been made. Seller will pay any ad valorem property tax imposed by any taxing authority on the Generating Facilities. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under Applicable Law.

ARTICLE 6: SECURITY FOR REMOVAL OF GENERATING FACILITIES

6.1 Security for Removal of Generating Facilities. No later than five hundred and forty-five (545) days prior to the expiration of the Term for each applicable Generating Facility, Seller shall provide Buyer a written estimate of the cost to remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility ("Estimated Removal Cost"). 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 Removal Cost. No later than three hundred and sixty-five (365) days prior to the end of the Term, Seller
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shall provide one of the following forms of security to secure the Estimated Removal Cost: (i) a performance bond or letter of credit in the aggregate amount of the Estimated Removal Cost, or (ii) an investment or deposit account with an initial balance equal to the Estimated Removal Cost, 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, which signatures each party shall provide in their reasonable discretion. For avoidance of doubt, any funds remaining after the removal of the applicable Generating Facility and restoration of the applicable Site to its condition prior to the installation of the applicable Generating Facility are the sole property of Seller, and Seller, in its sole discretion, shall determine which form of security to post to secure the Estimated Removal Cost. In the event of Seller’s bankruptcy, Buyer shall have the right to use the security for the sole purpose of removal of the applicable Generating Facility and restoration of the applicable Site to its condition prior to the installation of the applicable Generating Facility; any remaining funds shall remain the property of Seller or Seller’s Financing Parties, as applicable.

ARTICLE 7: ADDITIONAL OBLIGATIONS

7.1 Seller’s Additional Obligations.

(a) Seller shall reimburse the Buyer for Buyer’s payment of the CSI rebate reservation fee within thirty (30) days of receipt of the Buyer’s invoice for such payment.

(b) Seller shall reimburse Buyer for all costs associated with any and all review of Seller’s design proposal, construction inspection, quality assurance, construction management and coordination no later than thirty (30) days after Buyer sends invoice for such costs to Seller. The amount to be reimbursed under this Section 7.2 shall not exceed $75,000 in aggregate.

(c) Seller shall provide Buyer with final record drawings after completing construction of each Generating Facility.

(d) Seller shall provide Buyer with an executed copy of the Performance Guarantee, in the form of Exhibit 11 (Form of Performance Guarantee), for Buyer’s execution upon or prior to the Commencement of Work Date.

(e) Seller shall obtain the warranties described in Exhibit 4 (Technical and Warranty Requirements) for the equipment detailed therein.

(f) Seller agrees it shall pay prevailing wages (as defined in California Labor Code Section 1720 et seq.) in connection with the construction and operation of the Generation Facilities.

7.2 Milestones.

(a) Generally.

Seller shall achieve the Milestones, as such Milestones may be extended in accordance with clause (e) below.

(b) Monthly Reports.

Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide to the Buyer monthly progress reports concerning the progress towards completion
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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 the reasonable discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection 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. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a suggested punch list of any observed defects or deficiencies in the construction work or discrepancies between, on the one hand, installed equipment and workmanship and, on the other hand, this Agreement. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to either (i) document actions taken in response to the punch list items or (ii) provide an explanation as to why a certain punch list item is not required under this Agreement. 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 applicable Generating Facility except those items specifically excepted by mutual agreement between Buyer and Seller.

(e) Milestone Delays. In the event that (i) a Force Majeure Event, (ii) Buyer Default that impacts Seller’s ability to timely meet the Milestones or (iii) Buyer’s inability to start work on the Premises on or prior the Commencement of Work Date as scheduled in such Milestone schedule causes any delay in the achievement of a Milestone, such Milestone’s deadline may be extended, together with any extensions for other Milestones, for a period not to exceed, in the aggregate, one (1) year. 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 any or all of the Milestones exceed one (1) year.

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

7.3 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 Applicable 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
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required by the Agreement.

7.4 Insurance.

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 9 (Insurance Requirements).

7.5 Commissioning Tests.

Seller shall comply with all applicable Local Electric Utility requirements for pre-operational testing ("Commissioning Tests") with respect to each Generating Facility. 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 of a Generating Facility, Seller shall provide to Buyer written notification of the Actual Commercial Operation Date with respect to such Generating Facility, 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 Commissioning Tests. Seller may change the date for such Commissioning Tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days notice of the date of such Commissioning Tests.

7.6 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, assist Buyer with the negotiation of the Interconnection Agreement and such other agreements with the Local Electric Utility as needed to enable Seller to transmit Energy to the Delivery Points.

7.7 WREGIS.

If applicable, prior to the Actual Commercial Operation Dates of each Generating Facility, Seller shall assist Buyer with the registration of the applicable Generating Facility 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. In the event that WREGIS is not in operation as of the Actual Commercial Operation Date of a Generating Facility, Seller shall perform its obligations, as required under this Article as soon as WREGIS is in operation.

7.8 Facility Conformance to Buyer Specifications.

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 record drawings approved by the Buyer, or any specification or requirement of this Agreement. Seller shall promptly enforce the obligations of the contractors and/or equipment manufacturers with respect to any such defect.

7.9 Coordination with the Local Electric Utility and Western Electricity Coordinating Council ("WECC").

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

7.10 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. 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).

7.11 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.

7.12 Buyer’s Additional Obligations.

(a) Buyer shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Generating Facilities or any interest therein. Buyer also shall pay promptly before a fine or penalty may attach to the Generating Facilities any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Buyer is responsible under this Agreement. If Buyer breaches its obligations under this Section, it shall immediately notify Seller in writing, and shall promptly cause such lien on or with respect to the Generating Facilities (including if such arises in favor of any third party claiming through Buyer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Seller, and shall defend, indemnify and hold Seller harmless against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

(b) Buyer shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Sections 7.11 and Article 8.

(c) Buyer shall reasonably ensure that the Generating Facilities remain free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of Buyer for the purposes of this Agreement. Buyer will use best efforts to secure a solar easement for the Premises to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the Generating Facilities. Seller shall provide assistance to Buyer in seeking a solar easement; however, Buyer shall bear all costs and expenses related to obtaining any such easement.

7.13 Modifications to the Generating Facilities After Their Applicable Actual Commercial Operation Dates.
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After the Actual Commercial Operation Dates of the applicable Generating Facilities, Seller shall provide Buyer notice of any change, replacement or alteration of the applicable Generating Facilities, including the attachment of fixtures or erection of additions or structures in or upon the applicable Generating Facilities (collectively "Alterations") prior to undertaking any such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws, 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.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events.

(a) Excuse. Subject to Article 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

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

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

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

(b) "Force Majeure Event" may include, subject to this Article:

(i) acts of Nature such as storms, floods, lightning, volcanoes, earthquakes, range or forest fires and objects striking the earth from space (such as meteorites);

(ii) theft, vandalism, 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) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Seller's costs of operation of the Generating Facilities by fifteen percent (15%) or more (as such costs are calculated based upon the previous year's costs to Seller, as evidenced by Seller to Buyer);
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(vii) accidents, or construction related power interruptions and mechanical moves, not caused by Seller, its contractors or subcontractors; and/or

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

(c) Exclusion. "Force Majeure Event" does not include the following:

(i) economic hardship of either Party;

(ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in Section 8.1(b);

(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.

8.2 Conditions.

(a) In addition to the conditions set forth in Article 8.1(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 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.

8.3 Termination Due To Force Majeure Event.

If a Party is prevented from performing its material obligations under this Agreement for a period of 270 consecutive or non-consecutive days or more (whether full or partial days), or the Parties
mutually determine that a Force Majeure Event could reasonably be expected to prevent a Party from performing its material obligations for a period of 270 consecutive or non-consecutive days, the unaffected Party may terminate this Agreement, without liability of either Party to the other, including the liability to pay Termination Values, upon thirty (30) days written notice at any time during the Force Majeure Event.

ARTICLE 9: DISPUTE RESOLUTION

9.1 Buyer and Seller shall negotiate in good faith in event of any dispute during the performance of this Agreement. If the dispute cannot be resolved between the Buyer’s Project Manager and a member of Seller’s Project Management Team after two (2) days of negotiations, at either the Buyer’s or Seller’s option, the matter may be promptly escalated to the next level of command within each Party’s organization. If the dispute or problem cannot be resolved within five (5) additional business days, the matter shall be promptly escalated to the COO level of the Buyer and director of the Seller who shall attempt to resolve the dispute within five (5) business days.

9.2 Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either party to seek any judicial remedy.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Seller Defaults and Other Remedies.

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

(i) Seller admits in writing its inability to pay its debts generally as they become due; (b) Seller files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Seller makes an assignment for the benefit of creditors; (d) Seller consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Seller has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Seller’s assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Seller’s assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control;

(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;

(iii) any material representation or warranty made by Seller hereunder shall have been false or misleading in any material respect;

(iv) a material default under a Lease by Seller occurs;

(v) the Generating Facilities fail to produce any Delivered Energy for a period of greater than one hundred and twenty (120) consecutive days; and

(vi) Seller breaches any material term of the Agreement 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 Section 10.1 has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Buyer may terminate the Agreement by notifying the Seller; 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, 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 within such thirty (30) day period if a longer cure period is needed. Any Financing Party shall be an intended third-party beneficiary of this Article 10.

(c) If any Seller Default described under Section 10.1 has occurred and Buyer has terminated this Agreement as a result thereof in accordance therewith, then Seller’s sole liability to Buyer in respect of such Seller Default shall be the payment of an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in The Wall Street Journal on the day preceding the date of determination) of the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the Contract Rate hereunder (as such Contract Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of the Agreement times the Expected Annual Contract Capacity for each such year. Except as provided in Section 10.1, Buyer shall have no right to terminate this Agreement and shall have no other remedies. This limitation on remedies shall not extend to claim for property damage or personal injury as a result of Seller’s negligence or the negligence of the Seller’s affiliates, officers, agents, employees, and contractors.

(d) For the avoidance of doubt, Buyer shall not be obligated to pay the applicable Termination Value for a termination of this Agreement by Buyer for a Seller Default.

10.2 Buyer Defaults and Seller Remedies.

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

(i) Buyer admits in writing its inability to pay its debts generally as they become due; (b) Buyer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Buyer makes an assignment for the benefit of creditors; (d) Buyer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Buyer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Buyer’s assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Buyer’s assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control;

(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;

(iii) any material representation or warranty made by Buyer hereunder shall have been false or misleading in any material respect;

(iv) A material default by Buyer under a Lease occurs; and
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(v) Buyer breaches any material term of the Agreement 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 this Section 10.2 has occurred and is continuing, Seller may terminate the Agreement and upon such termination, Seller shall be entitled to receive from Buyer the applicable Termination Value. Additionally, Seller shall have the right to enter onto the Sites and remove the Generating Facilities in accordance with Section 10.4. The remedies provided in this section shall be Seller’s sole and exclusive remedy. This limitation on remedies, however, shall not extend to claim for property damage or personal injury as a result of Buyer’s negligence or the negligence of the Buyer’s affiliates, officers, agents, employees, and contractors.

10.3 Limitations on Liability.

(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, loss of any Existing Financial Incentives, interest charges, cost of capital or claims of its buyers or members to which service is made. Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as payable by Buyer to Seller under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages.

(b) Except with respect to the payment described in Section 10.1(e), Seller’s liability hereunder shall be in all respects limited to amounts paid to it hereunder during the most recent twenty-four (24) month period. This limitation on liability shall not limit insurance proceeds and does not extend to claims for personal injury as a result of Seller’s negligence or the negligence of the Seller’s affiliates, officers, agents, employees, and contractors.

10.4 Effect of Termination - Survival of Obligations.

Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon expiration of any Initial or Renewal Terms, or upon termination of the Agreement as to the applicable Generating Facility for any reason other than the exercise by Buyer of its Purchase Option pursuant to Section 2.2, Seller shall disconnect and remove the applicable Generating Facility from the Buyer’s premises and shall remediate and restore the Buyer’s premises to the condition preceding the installation of the Generating Facility, excepting normal wear and tear, at no cost to the Buyer within one hundred eighty (180) calendar days. Upon removal of the Generating Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer.

10.5 Indemnification.

(a) Subject to Article 10.3 (Limitations on Liabilities), to the fullest extent permitted by Applicable Law, 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. Such indemnification shall not apply to the extent Losses result from or arise out of the negligence, willful misconduct or violation of
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Applicable Law by an Indemnified Party.

(b) 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.

ARTICLE 11: REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Seller’s Representations, Warranties and Covenants.

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

(a) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, 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) 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

(f) 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.

11.2 Seller’s Additional Representations, Warranties and Covenants.

(a) Seller warrants, represents and covenants that all of its operating and maintenance personnel, including such personnel as contracted for by Seller, shall be adequately
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qualified and trained, and shall follow all VTA security protocols, throughout the term of the Agreement.

(b) Seller covenants to maintain and repair the 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 for damage in excess of ordinary wear and tear to the reasonable satisfaction of Buyer.

11.3 Buyer Representations and Warranties.

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

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

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

(c) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement in connection with Seller's performance of its obligations hereunder. 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 Applicable Law.

ARTICLE 12: ASSIGNMENT AND FINANCING

12.1 Assignment By Seller.

Seller shall not sell, transfer or assign (collectively, an “Assignment”) Seller’s rights or obligations under the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided that any such assignee assumes in writing the obligations of Seller hereunder; provided further that, notwithstanding the foregoing, Seller may, without consent of Buyer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement, in connection with any financing for the ownership, acquisition, construction, operation or use of the Generating Facilities. Any assignment by Seller in violation of this Section 12.1 shall not release Seller of its obligations hereunder.

12.2 Assignment by Buyer.

Buyer shall not assign the Agreement or any interest therein, without Seller’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such
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assignee assumes in writing the obligations of Buyer hereunder. Any assignment by Buyer without
the prior written consent of Seller shall not release Buyer of its obligations hereunder. In the event
that Buyer sells or otherwise transfers the Premises and opts not to relocate the applicable
Generating Facility, Buyer may either (1) terminate the Agreement as to the applicable Generating
Facility and pay Seller the applicable Termination Value 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 satisfactory to Seller evidencing creditworthiness equal to or greater
than the Buyer.

ARTICLE 13: OTHER TERMS & CONDITIONS

13.1 Notices.

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

Buyer
Name: Tom Fitzwater
Title: Manager, Environmental Programs and Resources Management
Address 1: Santa Clara Valley Transportation Authority
Address 2: 3331 North First Street
City: San Jose
State: CA
Zip: 95134
Phone: (408) 321-5705

Seller
Name: Steve Hanawalt
Title: Vice President, O&M and Customer Service
Company: SunPower Corporation, Systems
Address 1: 1414 Harbour Way South
Address 2:  
City: Richmond
State: CA
Zip: 94804
Phone: (510) 260-8282

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

13.2 Compliance with Laws.

Seller shall at all times comply with all Applicable Laws, ordinances, rules and regulations. 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.
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13.3 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.

13.4 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.

13.5 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 this Agreement.

13.6 No Third Party Beneficiary.

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (other than a permitted successor or assignee bound to this Agreement) as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

13.7 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.

13.8 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.

13.9 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.

13.10 Nature of Relationship.

(a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This 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
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representative of or otherwise bind the other Party.

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

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

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

13.11 Subcontracting.

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. Buyer shall have the option to provide Seller with a list of subcontractors that Buyer requests Seller not to subcontract with in connection with the Generating Facilities. Seller agrees (a) that it shall not contract with such companies to the extent that Seller is able to find another subcontractor experienced in the services for which the subcontractor is contemplated and able to perform such services at a cost substantially similar to those charged by any such subcontractor and (b) that if Seller is unable to find a replacement subcontractor in accordance with clause (a), Seller shall discuss such situation with Buyer and use commercially reasonable efforts to come to resolution prior to entering into a contract with such subcontractor.

13.12 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.

13.13 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
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replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

13.14 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.

13.15 Cooperation.

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


Each Party shall at its 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.

13.17 Time is of the Essence.

Time is of the essence in performance by the Seller.

13.18 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.

13.19 Entire Agreement, Integration/Merger Clause.

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

13.20 Non-Discrimination.

Seller shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County'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 (Sections 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
POWER PURCHASE AGREEMENT

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.

13.21 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.

13.22 Hazardous Substances.

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the 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, Seller must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

13.23 Disentanglement.

Seller shall cooperate with Buyer and Buyer's other electricity 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 provided by other electricity Sellers 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 held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

13.24 Conflict of Interest.

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

13.25 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 commenced within five (5) days of the incident, unless the Buyer requests or agrees to an extension or another time frame, and diligently completed by Seller. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel,
POWER PURCHASE AGREEMENT

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 to Buyer's property observed by Seller, whether or not resulting from Seller's operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer's best interests.

13.26 Cooperation with Review.

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on an annual 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 Generating Facilities are achieving their 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/or complying with any audit exceptions set forth in Buyer audits. This provision is in addition to other inspection and access rights specified in this Agreement.

13.27 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.

13.28 Debarment.

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


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.
13.30 Debt Liability Disclaimer.

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

13.31 Use of Buyer's Name for Commercial Purposes.

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer.

13.32 Account Manager.

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

13.33 Modification.

This Agreement may only be modified or amended in writing by mutual agreement of the Parties.
POWER PURCHASE AGREEMENT

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:
SOLAR STAR CALIFORNIA XXI, LLC,
a Delaware limited liability company

By: [Signature]
Name: [Name]
Title: [Title]

BUYER:
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY,
a California public entity

By: [Signature]
Name: Michael T. Burns
Title: General Manager

02/10/2011

Approved as to form:
By: [Signature]
VTA Counsel

EXHIBITS INCORPORATED INTO AGREEMENT

Exhibit 1 – Termination Values
Exhibit 2 – Description of Generating Facilities
Exhibit 3 – Sites 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 – Insurance Requirements
Exhibit 10 – Form of Lease
Exhibit 11 – Form of Performance Guarantee
EXHIBIT 1 – TERMINATION VALUES

The following Termination Values are based on the Standard System Design Package.

La Avenida: 1235 La Avenida St., Mountain View, CA
7th Street: 2240 S. 7th St., San Jose, CA
Zanker: 3990 Zanker Rd., San Jose, CA

<table>
<thead>
<tr>
<th>Commercial Operation Date plus:</th>
<th>Column 1:</th>
<th>Column 2:</th>
<th>Column 1:</th>
<th>Column 2:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>La Avenida</td>
<td>La Avenida</td>
<td>7th Street</td>
<td>7th Street</td>
</tr>
<tr>
<td>0 year</td>
<td>$4,363,839</td>
<td>--</td>
<td>$3,742,866</td>
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<tr>
<td>1 year</td>
<td>3,656,407</td>
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<td>3,137,739</td>
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<tr>
<td>2 years</td>
<td>3,159,443</td>
<td>--</td>
<td>2,713,036</td>
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</tr>
<tr>
<td>3 years</td>
<td>2,707,416</td>
<td>--</td>
<td>2,326,904</td>
<td>--</td>
</tr>
<tr>
<td>4 years</td>
<td>2,263,948</td>
<td>--</td>
<td>1,948,171</td>
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<tr>
<td>5 years</td>
<td>1,822,498</td>
<td>--</td>
<td>1,571,235</td>
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<tr>
<td>6 years</td>
<td>1,768,595</td>
<td>--</td>
<td>1,524,920</td>
<td>--</td>
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<tr>
<td>7 years $2,435,039</td>
<td>1,724,182</td>
<td>$2,100,032</td>
<td>1,486,693</td>
<td>$3,752,158</td>
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<tr>
<td>8 years</td>
<td>1,671,361</td>
<td>--</td>
<td>1,441,211</td>
<td>--</td>
</tr>
<tr>
<td>9 years</td>
<td>1,609,074</td>
<td>--</td>
<td>1,387,557</td>
<td>--</td>
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<tr>
<td>10 years</td>
<td>2,424,930</td>
<td>1,536,925</td>
<td>2,091,585</td>
<td>1,325,394</td>
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<tr>
<td>11 years</td>
<td>1,453,728</td>
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<td>1,253,697</td>
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<tr>
<td>12 years</td>
<td>1,358,447</td>
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<td>1,171,571</td>
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<tr>
<td>13 years</td>
<td>1,249,570</td>
<td>--</td>
<td>1,077,707</td>
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<tr>
<td>14 years</td>
<td>1,126,628</td>
<td>--</td>
<td>971,708</td>
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<tr>
<td>15 years</td>
<td>2,280,751</td>
<td>987,936</td>
<td>1,967,586</td>
<td>852,116</td>
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<tr>
<td>16 years</td>
<td>832,059</td>
<td>--</td>
<td>717,691</td>
<td>--</td>
</tr>
<tr>
<td>17 years</td>
<td>656,852</td>
<td>--</td>
<td>566,580</td>
<td>--</td>
</tr>
<tr>
<td>18 years</td>
<td>461,757</td>
<td>--</td>
<td>398,307</td>
<td>--</td>
</tr>
<tr>
<td>19 years</td>
<td>244,396</td>
<td>--</td>
<td>210,816</td>
<td>--</td>
</tr>
</tbody>
</table>

Ex 1 - 1
EXHIBIT 2 – DESCRIPTION OF GENERATING FACILITIES

1235 La Avenida St., Mountain View, CA

Specifications:
System Type* Parking Fixed Tilt
System Output DC rating:* 637.50 kWdc
Estimated Year 1 Production: 1,011,330 kWh

*SunPower reserves the right to alter system type, equipment (e.g. modules, inverters, etc) and/or DC rating during design phase upon mutual agreement with the VTA, with the expectation that revised system would not significantly alter estimated year 1 kWh production and that all equipment will be of equivalent or improved quality standards.

Preliminary System Array Layout:
2240 S 7th St., San Jose, CA

Specifications:
System Type
System Output DC rating:
Estimated Year 1 Production:

*SunPower reserves the right to alter system type, equipment (e.g. modules, inverters, etc) and/or DC rating during design phase upon mutual agreement with the VTA, with the expectation that revised system would not significantly alter estimated year 1 kWh production and that all equipment will be of equivalent or improved quality standards.

Preliminary System Array Layout:
3990 Zanker Rd, San Jose, CA

Specifications:
System Type* Parking Fixed Tilt
System Output DC rating:* 969.00 kWde
Estimated Year 1 Production: 1,529,082 kWh

* SunPower reserves the right to alter system type, equipment (e.g. modules, inverters, etc) and/or DC rating during design phase upon mutual agreement with the VTA, with the expectation that revised system would not significantly alter estimated year 1 kWh production and that all equipment will be of equivalent or improved quality standards.

Preliminary System Array Layout:

Please refer to System Product Data Sheets on the pages to follow.
BENEFITS

Highest Efficiency
SunPower™ Solar Panels are the most efficient photovoltaic panels on the market today.

More Power
Our panels produce more power in the same amount of space—up to 50% more than conventional designs and 100% more than thin film solar panels.

Reduced Installation Cost
More power per panel means fewer panels per install. This saves both time and money.

Reliable and Robust Design
Proven materials, tempered front glass, and a sturdy anodized frame allow the panel to operate reliably in multiple mounting configurations.

A new standard for power plants.
The SunPower® 425 Solar Panel provides today's highest efficiency and performance. Utilizing 128 back-contact solar cells, the SunPower 425 delivers a total panel conversion efficiency of 19.7%. The panel's reduced voltage-temperature coefficient, anti-reflective glass and exceptional low-light performance attributes provide outstanding energy delivery per peak power watt.

SunPower's High Efficiency Advantage

<table>
<thead>
<tr>
<th></th>
<th>Thin Film</th>
<th>Conventional</th>
<th>SunPower E18 Series</th>
<th>SunPower E19 Series</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>10%</td>
<td>14%</td>
<td>18%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Ex 2 - 4
SUNPOWER E19 / 425 SOLAR PANEL
MAXIMUM EFFICIENCY AND PERFORMANCE

Electrical Data
- Peak Power (W): 425 W
- Efficiency: 19.7%
- Rated Voltage: 72.9 V
- Rated Current: 5.83 A
- Open Circuit Voltage: 85.6 V
- Short Circuit Current: 6.18 A
- Maximum System Voltage: 600 V
- Temperature Coefficient of Power (W/P): -0.38% /°C
- Voltage (Voc): 255.5 mV /°K
- Current (Isc): 3.5 mA /°K
- NOCT: 45°C ± 2°C
- Series Fuse Rating: 15 A

Mechanical Data
- Solar Cells: 128 Sunpower allback contact mono crystalline
- Front Glass: High transmission tempered glass with anti-reflective (AR) coating
- Junction Box: IP-65 rated with 3 bypass diodes
- Dimensions: 32 x 153 x 128 (mm)
- Output Cables: 1000 mm length cables / MultiConnect (MC) connectors
- Frame: Aluminum alloy type 6063 (silver)
- Weight: 56.0 lbs (25.4 kg)

I-V Curve

Tested Operating Conditions
- Temperature: -40°F to +185°F (40°C to +85°C)
- Max load: 50 psf (245 kg/m²) (2400 Pa) front and back - e.g. wind
- Impact Resistance: Half 1 in (25 mm) at 52 mph (23 m/s)

Warranties and Certifications
- Warranties: 25 year limited power warranty
- 10 year limited product warranty
- Certifications: Tested to UL 1703, Class C Fire Rating

Dimensions

CAUTION: READ SAFETY AND INSTALLATION INSTRUCTIONS BEFORE USING THE PRODUCT.
Unparalleled Performance
With their advanced system intelligence, next-generation Edge™ MPPT technology, and industrial-grade engineering, PowerGate Plus Inverters maximize system uptime and power production, even in cloudy conditions.

Power Efficiency

<table>
<thead>
<tr>
<th>Power Level</th>
<th>Input Voltage</th>
<th>Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>50 kW</td>
<td>92.2%</td>
</tr>
<tr>
<td>20%</td>
<td>100 kW</td>
<td>95.6%</td>
</tr>
<tr>
<td>30%</td>
<td>150 kW</td>
<td>96.2%</td>
</tr>
<tr>
<td>40%</td>
<td>200 kW</td>
<td>96.5%</td>
</tr>
<tr>
<td>50%</td>
<td>250 kW</td>
<td>96.4%</td>
</tr>
<tr>
<td>75%</td>
<td>375 kW</td>
<td>96.0%</td>
</tr>
<tr>
<td>100%</td>
<td>500 kW</td>
<td>96.0%</td>
</tr>
</tbody>
</table>

1 10kW is minimum. 2 40V model.

Power Efficiency without Transformer

<table>
<thead>
<tr>
<th>Power Level</th>
<th>Input Voltage</th>
<th>Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>50 kW</td>
<td>97.08%</td>
</tr>
<tr>
<td>20%</td>
<td>100 kW</td>
<td>97.52%</td>
</tr>
<tr>
<td>30%</td>
<td>150 kW</td>
<td>97.56%</td>
</tr>
<tr>
<td>40%</td>
<td>200 kW</td>
<td>97.46%</td>
</tr>
<tr>
<td>50%</td>
<td>250 kW</td>
<td>97.09%</td>
</tr>
<tr>
<td>75%</td>
<td>375 kW</td>
<td>95.57%</td>
</tr>
<tr>
<td>100%</td>
<td>500 kW</td>
<td>96.31%</td>
</tr>
</tbody>
</table>

1 30kW is minimum.

Edge MPPT
Provides rapid and accurate control that boosts PV plant kilowatt yield.
Provides wide range of operation across all photovoltaic cell technologies.

Printed Circuit Board Durability
Wide thermal operating range: -40°C (-40°F) to 85°C (185°F)
Conformal coated to withstand extreme humidity and air-pollution levels.

Profitable PV Power
The Satcon® PowerGate® Plus 500 kW PV Inverter has a significant impact on the profitability dynamic of large-scale solar PV systems. With its unparalleled system intelligence, next-generation Edge™ MPPT technology, and industrial-grade engineering, the PowerGate Plus 500 kW Inverter maximizes system uptime and power production, even in the harshest environments.

Commercial and Utility Scale
The world’s largest solar power installations depend on Satcon PowerGate Plus PV Inverters to provide efficient and stable power—even in the harshest climates.

Advanced, Rugged, and Reliable
Engineered from the ground up to meet the demands of large-scale installations, Satcon PV Inverters feature an outdoor-rated enclosure, advanced monitoring and control capabilities, and Edge™ Satcon’s next-generation MPPT solution.

Proven Performance
The proven leader in solar PV inverter solutions for commercial installations, Satcon sets the standards for efficient large-scale power conversion.

Increased PV Plant Yield
At the heart of PowerGate Plus is Edge, Satcon’s next-generation power optimization solution. With rapid and accurate MPPT control, Edge increases PV plant kilowatt yield by extending the production window of arrays, enabling them to operate at optimal voltage and current levels for longer periods of time—even in varied sun conditions. To maximize efficiency, Edge improves the performance of all PV technologies, including fixed and tracking solar arrays, enabling you to get the most from your investment.
Proven Reliability
Rugged and reliable, PowerGate Plus PV inverters are engineered from the ground up to meet the demands of large-scale installations.

Low Maintenance
Modular components make service efficient
Dual cooling fans

Safety
Seismic Zone 4 compliant
Built-in DC and AC disconnect switches
Integrated DC two-pole disconnect switch isolates the inverter (with the exception of the GFDI circuit) from the photovoltaic power system to allow inspection and maintenance
Built-in isolation transformer
Protective cover over exposed power connections

<table>
<thead>
<tr>
<th>PowerGate Plus 500kW Specifications</th>
<th>UL/CSA</th>
<th>CE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Input Parameters</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Array Input Voltage</td>
<td>600V DC</td>
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</tr>
<tr>
<td></td>
<td>900V DC</td>
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</tr>
<tr>
<td>Input Voltage Range (MPPT; Full Power)</td>
<td>333–600V DC</td>
<td>200V AC</td>
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<tr>
<td></td>
<td>420–850V DC</td>
<td>265V AC</td>
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<td></td>
<td>320–600V DC</td>
<td>480V AC</td>
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<td>Maximum Input Current</td>
<td>1,564A DC</td>
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<td>1,228A DC</td>
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<td></td>
<td>1,247A DC</td>
<td>400V AC</td>
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<td></td>
<td>1,628A DC</td>
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<td><strong>Output Parameters</strong></td>
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<td>Output Voltage Range (L-L)</td>
<td>126–220V AC</td>
<td>208V AC</td>
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<tr>
<td></td>
<td>233–290V AC</td>
<td>265V AC</td>
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<td></td>
<td>352–440V AC</td>
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<td></td>
<td>422–528V AC</td>
<td>480V AC</td>
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<td>Nominal Output Voltage</td>
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</tr>
<tr>
<td></td>
<td>265V AC</td>
<td>•</td>
</tr>
<tr>
<td></td>
<td>400V AC</td>
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<td></td>
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<td>50 Hz</td>
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<td>Number of Phases</td>
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<td>Maximum Output Current per Phase</td>
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<td></td>
<td>1,000A</td>
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<tr>
<td></td>
<td>722A</td>
<td>400V AC</td>
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<tr>
<td></td>
<td>602A</td>
<td>480V AC</td>
</tr>
</tbody>
</table>

• Standard • Optional

The integrated external transformer is standard on the 400V AC and 480V AC models. Only custom transformer solutions are also available.
### PowerGate Plus 500 kW Specifications

<table>
<thead>
<tr>
<th>Feature</th>
<th>UL/CSA</th>
<th>CE</th>
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<tr>
<td><strong>Maximum Overcurrent Protection per Phase</strong></td>
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<td>1,805 A</td>
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<td>1,762 A</td>
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<td>993 A</td>
<td>400V AC</td>
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<tr>
<td>752 A</td>
<td>480V AC</td>
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<td><strong>CEC-Weighted Efficiency</strong></td>
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<tr>
<td>97%</td>
<td>208V AC</td>
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<td>97%</td>
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<tr>
<td>96%</td>
<td>400V AC</td>
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<tr>
<td>96%</td>
<td>480V AC</td>
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<td><strong>Maximum Continuous Output Power</strong></td>
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<td>5000 W (5000 VA)</td>
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<td><strong>Total Losses</strong></td>
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<td>138.12 W</td>
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<td>117.0 W</td>
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<td>-138.12 W</td>
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<td><strong>Power Factor at Full Load</strong></td>
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<td><strong>Harmonic Distortion</strong></td>
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<td>&lt;3% THD</td>
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<td><strong>Temperature</strong></td>
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<td>Operating Ambient Temperature Range (Full Power)</td>
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<td>Storage Temperature Range</td>
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<td>Number of Inputs and Fuse Rating</td>
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<td>20 (10A DCC/Opt)</td>
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<td>30 (100A DCC/Opt)</td>
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<td><strong>Transformer</strong></td>
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<tr>
<td>Integrated External Transformer</td>
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<tr>
<td>400V AC</td>
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<td>480V AC</td>
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<td><strong>Low Voltage Tap Line</strong></td>
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<td>20%</td>
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<td><strong>Inverter and Integrated External Transformer Cabinets</strong></td>
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<td>Enclosure Rating (Outdoor) (ECC Grade)</td>
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<td>NEMA 3R, IP44</td>
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<td><strong>Enclosure Finish</strong></td>
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<tr>
<td>(14-Gauge, Powder-Coated Steel)</td>
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<tr>
<td>RAL-7032</td>
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<tr>
<td><strong>Base and Door Finish</strong></td>
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<tr>
<td>(16-Gauge, Powder-Coated Steel)</td>
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<tr>
<td>RAL-7032</td>
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<tr>
<td><strong>Cabinet Dimensions (Height x Width x Depth)</strong></td>
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<tr>
<td>Inverter</td>
<td>93.47&quot; x 38.75&quot; x 42.47&quot;</td>
<td>(237.5 cm x 98.5 cm x 107.8 cm)</td>
</tr>
<tr>
<td>Transformer</td>
<td>77&quot; x 49&quot; x 30.5&quot;</td>
<td>(195.5 cm x 124.5 cm x 77.4 cm)</td>
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<tr>
<td><strong>Cabinet Weight</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inverter</td>
<td>5,900 lbs.</td>
<td>2,676 kg</td>
</tr>
<tr>
<td>Transformer</td>
<td>3,200 lbs.</td>
<td>1,451 kg</td>
</tr>
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</table>

- Standard
- Optional
### Output Options

**PowerGate Plus 500 kW**

<table>
<thead>
<tr>
<th></th>
<th>UL/CSA</th>
<th>CE</th>
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<tr>
<td><strong>Testing and Certification</strong></td>
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<tr>
<td>UL1741, CSA 107.1-01, IEE-1547, IEE-62412</td>
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<td>CE Certification</td>
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<tr>
<td>Zone 4 Seismic Rating</td>
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<tr>
<td><strong>Warranty</strong></td>
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<tr>
<td>Five Years</td>
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<tr>
<td>Extended Warranty (10, 15, or 20 years)(Optional)</td>
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<tr>
<td>Extended Service Agreement (Optional)</td>
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<tr>
<td><strong>Intelligent Monitoring</strong></td>
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<tr>
<td>Satcon PVView® Plus (Optional)</td>
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<tr>
<td>Satcon PV Zone (Optional)</td>
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<tr>
<td>Third-Party Compatibility</td>
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</tr>
</tbody>
</table>

1. Standard
2. Extended transformer
3. External transformer

---

**Satcon Corporation**

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P: 617.897.2400

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P: 905.639.4602

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P: 34-917610375

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Classic 7 Business Park

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Czech Republic

sales@satcon.com

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EXHIBIT 3 – SITE DESCRIPTION

Site Name:
VTA North Division Facility

Site Address:
1235 La Avenida St., Mountain View, CA 94043

Description of Site and Surrounding Area:
The North Division Facility at 1235 La Avenida St. in Mountain View has been in operation since 1975. Situated north of I-101 and east of N. Shoreline Boulevard, this facility maintains a fleet of 116 buses and is home to 286 VTA employees.

Site Exposure: 85 MPH wind zone; Exposure C

Satellite Picture of Property:
Site Name:
VTA Don Pedro Chaboya Division Facility

Site Address:
2240 S. 7th St., San Jose, CA 95112

Description of Site and Surrounding Area:
The Don Pedro Chaboya Division Facility at 2240 S. 7th St. in San Jose has been in operation since 1980. Situated, southwest of S. 10th St. and northwest of Tully Road, this facility maintains a fleet of 185 buses and is home to 500 VTA employees.

Site Exposure: 85 MPH wind zone; Exposure C

Satellite Picture of Property:
Site Name:
VTA Cerone Division Facility

Site Address:
3990 Zanker Rd, San Jose, CA 95134

Description of Site and Surrounding Area:
The Cerone Division Facility at 3990 Zanker Rd in San Jose has been in operation since 1979. Situated on multiple acres due south of I-237, this facility maintains a fleet of 136 buses and is home to 490 VTA employees.

Site Exposure: 85 MPH wind zone; Exposure C

Satellite Picture of Property:
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

TECHNICAL AND WARRANTY REQUIREMENTS

1. General Technical Requirements

In an effort to assure reliability, quality, and longevity of the Generating Facilities, and to establish a minimum quality level whereby the Buyer would consider a buyout after seven (7) years, Buyer provides the following general technical requirements and product specifications to which Seller 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 Generating Facilities, shall be the responsibility of Seller. 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 Generating Facility 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 the applicable seismic standards for the Bay Area. The parking area PV-support structures at the Sites shall be constructed as parking lot canopies. The PV support system design must be coordinated with the existing parking layout on the structure. This may include any one of 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 canopies will not include drainage provisions for channeling of rainwater runoff. The elevated PV system layout must also accommodate Fire Department access and fire protection requirements.

B. Corrosion Resistance - All structural components, including array structures, shall be painted, coated, or otherwise protected in a manner commensurate with the minimum 25-year design life. Particular attention shall be given to the prevention of corrosion.

C. Codes and Standards- All Generating Facilities 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 edition of all applicable codes, standards, and recommendations of the following agencies in effect as of the Effective Date:

ANSI – American National Standards Institute

ASHRAE - American Society Of Heating, Refrigeration, and Air Conditioning Engineers

ASCE - American Society of Civil Engineers

Ex 4 - 1
EXHIBIT 4 - TECHNICAL AND WARRANTY REQUIREMENTS

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


EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

- 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,
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

specific requirements for individual components of the Generating Facilities 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 or prior to installation on the California Energy Commission list of Eligible Renewable Equipment. In addition, all modules must have a minimum 20-year warranty.

If PV modules using hazardous materials (e.g., Cadmium or other hazardous materials) are in use, the environmental impact of the hazardous material usage must be discussed and documented in writing, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs related to PV modules containing hazardous materials and responsibility for those costs must be clearly identified.

Seller shall create a uniform appearance of the arrays and spacing between individual modules and panels should be uniform. As much as reasonable, all mechanical hardware, conduit, junction boxes, and other equipment should be concealed beneath and/or behind the array.

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 1547 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.

User definable power tracking that matches the inverter to the array, as well as adjustable delay periods to customize system shut down sequences must also be provided.

The inverter must have a continuous power rating that exceeds the PV array output and AC current distortion at rated power must be less than 5% Total Harmonic Distortion (THD)) at all power output loadings.

Inverters are rated for exterior use and will be installed in accordance with manufacturer’s instructions.

Thermal and other operating parameters specific to the Sites must also be considered for this component of the system with the ambient temperature rated at between -4 degrees F and 122 degrees F.
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

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.

In addition, the DC/AC inverter output will also provide standard AC metering functions, including amps, volts, KWD, and delivered KWH per interval period. These metering functions shall be integral to the inverter unit.

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 built under UL508, Industrial Controls specification.

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 heavy duty, 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 as near as is practical to the supply end of the conductors being protected.

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, or RK5 and of the appropriate voltage, delay or non delay characteristic, and current rating to provide both complete short circuit and overload protection per NEC sections regarding component protection.

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

All fuses and other protective devices and holders must be engineered to safely protect system components under “worst case” expected field conditions including temperature extremes.
PV panel strings must be individually protected from short circuit conditions that may originate within the panels themselves.

J. Wiring and Connectors:

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

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, and termination points.

K. Raceways:

Steel Conduit System shall meet the following specifications:

1. UL Listed:

The galvanized rigid steel conduit must be UL Listed and must be used below the combiner boxes on the steel columns for the carports or in traffic areas. All conduit, fittings, and accessories must be new, unused material. All other exposed conduit will be EMT with rain-tight compression fittings.

2. All factory cut threads on conduit, elbows, nipples, and fittings shall be protected by application of a urethane coating. A urethane coating shall be uniformly and consistently applied to the interior of all conduit and fittings. This internal coating shall be a nominal 2-mil thickness. Conduit or fittings having pinholes or areas with thin or no coating shall be unacceptable.

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 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 and will be dry type PCBs shall not be permitted.

M. Grounding:

Provide driven ground rod when specified and provide green equipment ground conductors sized in accordance with NEC on main AC power circuit and DC collector circuits. Ground rods shall be copper clad steel ¾-inch x 10 feet unless otherwise indicated on one line diagram.

Appropriate tie in and grounding of the entire PV system shall be per NEC-250 requirements.

N. Operational Identification and Warnings:

Project Sign:
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

Seller shall install engraved 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:

DC Power Circuits:

Seller shall also provide identification of all DC power circuits on switches and clearly identify individual module strings in DC combiner boxes. Appropriate wire color codes (i.e. yellow and white) for negative and positive circuits shall also be used.

Disconnect Sign:

If the Disconnect location is not near Point of Common Coupling, permanent signage must be installed providing a clear description of the location of the device.

If the revenue meter is inside a locked room, Seller shall install one sign on the pad mount transformer and one sign on the door to the electrical room identifying the presence of a generator and describing with a map the location of the disconnect switch.

The disconnect signs are as follows (Letter size, etc. should be 1/2-inch engraved on plastic sign with a red background):

1. At the disconnect switch: "GENERATOR DISCONNECT SWITCH"

2. Switch should only de-energize PV system at each site. Disconnect should not be “main breaker” and de-energize applicant’s resident load. A single disconnect should isolate the PV system at each Site.

Install any additional signage as required by code or PG&E, such as:

1. “Data Acquisition System (DAS)” sign posted on the outside of the enclosure.


Signs shall be maintained in good condition for the duration of the Agreement. Signs shall be promptly cleaned of graffiti and other defacements, cleaned semi-annually of dirt and grime, and replaced if damaged or stolen.

2. General Documentation Requirements

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, as necessary, should significant changes occur.

2. Design basis

3. Equipment and system sizing computations
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

4. Design computations

5. System assembly and detail parts’ drawings

6. Construction detail drawings

7. Construction plans and compliance documents, and project permits

8. All electrical drawings, single line, three lines, physical layout, wiring diagrams

9. Control logic and programs

10. All documents submitted to and provided by regulatory permitting and jurisdictional agencies and PG&E

11. Commissioning plans and reports and records

12. Operation and maintenance manuals, & warranty information

13. Operation and maintenance records and logs.

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 6 bound and 1 unbound hard copies and 2 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.

3. Regulatory, Permit, and Licensing Requirements

All work undertaken per this RFP 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 Seller herein to seek and obtain all permits including but not limited to those from Pacific Gas and Electric for Utility interconnection applications and final interconnection, and any other relevant permits. Seller shall be responsible for and shall obtain all necessary permits for the project.
EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

Seller shall supply and install all equipment required to interconnect the Generating Facilities to PG&E. Seller shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with any necessary utility required equipment upgrades are excluded from Seller’s scope of work.

4. Construction, Operation and Maintenance General Obligations and Warranties

Seller 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 Seller’s use.

Throughout the term of the Agreement, Seller shall keep the site free from accumulations of waste material, debris or rubbish. Seller 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.

Seller will be responsible for all aspects of maintaining the Generating Facilities.

Seller shall secure the following minimum warranties for the Generating Facilities which shall be fully transferable if a Purchase Option is exercised in accordance with Section 2.2 of the Agreement:

• Seller shall use commercially reasonable efforts to secure applicable warranties required to qualify the Generating Facilities for available rebates or incentives

• 10-year complete system warranty

• 20-year PV panel warranty (minimum)

• 10-year inverter warranty (minimum) The Generating Facilities shall be operated and maintained in accordance with current industry standards and to protect the longevity of the facility.
EXHIBIT 5 – ENGINEERING AND CONSTRUCTION REQUIREMENTS

DESIGN AND CONSTRUCTION PHASE SERVICES

1. DESIGN PHASE

1.1. Standard of Care

- Seller 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.

- Seller 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 Generating Facilities.

1.2. Signing and Stamping Documents

- Final Construction Documents and other submittal documents must be signed and stamped by the Design Professional(s) as appropriate to the discipline of Work.

1.3. Insurance Requirements

- Seller’s must meet the insurance requirements as set forth in Exhibit 9 for design phase of the Work.

2. FIRE PROTECTION PLAN

2.1. GENERAL

2.2. DEFINITIONS

2.2.1. 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.

2.3. FIRE PROTECTION PLAN REQUIREMENTS

2.3.1. Seller must prepare and submit a written Fire Protection Plan. At a minimum, the fire protection plan must include:

2.3.1.1. The name and contact phone number of the person(s) responsible for compliance with the Fire Protection Plan.

2.3.1.2. Procedures for:

- Reporting emergencies to the fire department.
- Emergency notification, evacuation and/or relocation of all persons at each Site.
- Hot Work operations
- Management of hazardous materials
- Removal of combustible debris
- Maintenance of emergency access roads.

Ex 5 - 1
EXHIBIT 5 – ENGINEERING AND CONSTRUCTION REQUIREMENTS

2.4. IMPLEMENTATION

2.4.1. Seller is responsible for implementation of the requirements and provisions of the approved Fire Protection Plan.

2.4.2. Seller is responsible for communicating the requirements of the Fire Protection Plan to all Subcontractors and other personnel working at the Premises.

2.4.3. Seller is not responsible for any required installation of new fire hydrants, fire flow testing, or new water connections.

2.4.4. Seller is not responsible for design and installation of any required fire sprinkler design system.

2.5. SUBMISSION

2.5.1. Submit six (6) copies of a Fire Protection Plan.

2.6. ACCESS TO WORK

2.6.1. Seller must provide Buyer continuous access to the Work as long as activities do not interfere with bus operations and maintenance.

2.7. USE OF PROJECT SITE

2.7.1. Seller must confine operations at each Site to areas permitted by law, ordinances, permits and this Agreement, and must not unreasonably encumber the Sites with any materials, equipment, temporary structures, or temporary measures.

2.7.2. Seller’s employees, or others subject to the Seller’s control, are not permitted to reside on the Premises in temporary living facilities.

2.8. WORKPLACE ENVIRONMENT

2.8.1. The use or possession of alcohol, weapons, or illegal controlled substances by Seller, or others subject to Seller’s control, on Buyer property is prohibited.

2.8.2. Seller must ensure and maintain a workplace environment free of personal harassment and intimidation.

2.8.3. 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.

2.8.4. 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.

2.8.5. It is the responsibility of Seller to:

- Inform its employees and Subcontractors that behavior that creates an intimidating, hostile, or offensive workplace environment is prohibited;
- Create a workplace environment that is free from harassment; and
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- Take corrective action to stop prohibited behavior/conduct.

2.9. DISRUPTION OF BUYER’S NORMAL OPERATIONS

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

2.9.2. Seller shall assume some phasing of construction activities in parking areas. Multiple mobilizations by Seller or its subcontractors will not be required. Phasing of work in parking lots is reasonably acceptable, however work must proceed continuously and uninterrupted. Start and stop operations will not be required.

2.9.3. Seller is not responsible for modifications and/or reconfiguration of the existing parking lots to accommodate installation of the photovoltaic parking canopies.

2.9.4. Seller shall not be responsible for any re-stripping of the parking lot areas, unless specifically related to the construction of the photovoltaic parking canopies.

2.10. CLEANUP

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

2.10.2. When cleanup is paid for as a separate Bid item, full compensation for such work must be included in the Bid price for cleanup.

2.10.3. When the Bid price is a lump sum, or there is no unit price item for cleanup, full compensation for cleanup will be considered to have been included in the various items of Work.

2.10.4. Seller must, before certifying that the entire Work of the Generating Facilities is complete and/or requesting Milestone completion inspection, clean material storage sites and all ground occupied or affected in connection with the Work or designated portion of the Work, and must leave all parts of the Generating Facilities in a neat and presentable condition satisfactory to Buyer’s Project Manager.

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

2.10.6. If Seller fails to clean up as required by this Agreement, Buyer may so and the cost thereof will be charged to Seller and deducted from progress payments due or to become due to Seller.

2.10.7. No landscaping is required by Seller. Tree removal, as required, at all Sites, is the responsibility of the Buyer. Buyer will remove trees/shrubs if required to prevent shading that will impact power generation of the Generating Facilities in areas outside the construction area.

2.11. DISPOSAL OF MATERIAL OUTSIDE PROJECT AREA

2.11.1. Removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not the responsibility of Seller. Changes to design or construction as a result of utilities and or
hazards, underground or above ground, or any undocumented building upgrades are not the responsibility of Seller.

2.11.2. When any material is to be disposed of outside the Project area, at other than a public disposal site, Seller must first obtain a written consent from the property Buyer of the proposed disposal site, and furnish Buyer a copy of said consent. Property Buyer’s written consent must acknowledge receipt of the soils testing report, if any, for the materials to be disposed.

2.11.3. Disposal of 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 Seller’s request for Final Inspection, Seller must submit copies of all Hazardous Waste Manifests signed by Toxic Substances Disposal Facilities (“TSDF’s”) and certificates of disposal, to prove that Seller has legally disposed of such materials. Submit four (4) copies of each manifest. Notwithstanding the foregoing, Seller and Buyer hereby acknowledge and agree that Seller is only responsible for disposing of Hazardous Waste brought onto a Site by Seller or a subcontractor under Seller’s control.

2.12. HAZARDOUS MATERIALS

2.12.1. Seller 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 Premises.

2.12.2. 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.

2.12.3. Prior to starting Work, Seller must submit to Buyer six (6) copies of a list of all Hazardous Materials expected to be used on the Premises. Seller must keep a copy of the list at the Sites. This list must include but not be limited to any cleaners, solvents, paints or explosive charges used in the Work. Seller must submit one (1) copy of OSHA Form 20 – Material Safety Data Sheet (“MSDS”) for each material listed and must advise every person at or near the Sites of these materials, of proper handling, and of proper action in case of accident or exposure.

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

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

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

2.12.7. Seller must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials.

2.13. TRENCHING AND EXCAVATION

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

2.13.2. Before any excavation five feet or more in depth:

- Sellers must, pursuant to California Labor Code §6705, submit to Buyer specific plans showing details of provisions for worker protection from caving ground. This in no way relieves Seller from the requirement of maintaining safety in all operations performed by Seller or subcontractors. Submit four (4) copies of the plans.

- The detailed plans showing design of all shoring, bracing, sloping or other provisions shall be prepared at Seller’s sole expense by a California registered Civil or Structural Engineer. Buyer’s acceptance only constitutes acknowledgment of the submission and does not constitute review or approval of the designs, design assumptions, criteria, accuracy, completeness, suitability for use, implementation, or any other quality of the plans, which are solely the responsibility of Seller and Seller’s engineer.

2.14. AIR POLLUTION CONTROL

2.14.1. Seller 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. If there is a conflict between the Bay Area Air Pollution Control District rules, regulations, ordinances, and statutes and the rules, regulations, ordinances, and statutes of other regulatory agencies, the most stringent shall govern.

2.14.2. Seller must not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity as will violate any regulations.

2.14.3. Seller must minimize dust nuisances resulting from performance of the Work, both inside and outside the Premises limits, by applying either water or dust palliative, or both.

2.15. WATER POLLUTION CONTROL

2.15.1. Seller must comply with all Federal, State and local water pollution prevention and storm drain pollution prevention rules, regulations, ordinances, statutes, guidelines, and Project specific permit requirements.

2.15.2. If required by law, ordinance, regulation, code, permit or the requirements of this Agreement, Seller must prepare a Project Specific Storm Water Pollution Prevention Program (SWPPP).

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

2.15.4. No provision of this Agreement relieves Seller 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.
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2.15.5. Compliance with water pollution requirements does not relieve Seller from responsibility to comply with all provisions of this Agreement, particularly Seller’s responsibilities for damage and preservation of property.

2.16. SOUND CONTROL

2.16.1. The Seller must comply with all CAL OSHA requirements.

2.16.2. The Seller must comply with all local sound control and noise level rules, regulations, and ordinances that apply to any Work performed pursuant to the requirements of this Agreement.

2.16.3. Each internal combustion engine, used for any purpose on the Premises or related to the Generating Facilities, must be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Premises without said muffler.

2.16.4. Noise level from and hours of Seller’s operations, that are located within city limits, must comply with city ordinances or requirements.

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

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

2.17.1. Seller must conform to the rules and regulations for sanitary provisions established by the State and any other applicable jurisdictions.

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

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

2.17.4. Seller shall be allowed to use on site water and power as available for construction at no charge to Seller. Seller shall utilize an onsite fire hydrant for water supply during construction at a distance of no more than 1000 ft. from the work area.

2.17.5. Use of a temporary diesel generator is acceptable during construction activities.

2.18. RECYCLING OF MATERIALS

2.18.1. The California Integrated Waste Management Board (CIWMB) requires all Cities and Counties to develop a Source Reduction and Recycling Program (SRRP) for all development projects such that solid waste intake to landfills is reduced. This project is included in the CIWMB/SRRP requirements; therefore, the Seller is required to ensure that debris generated from demolition or construction activities is recycled or salvaged in accordance with all state and local CIWMB requirements.

2.19. SHOP DRAWINGS
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2.19.1. Seller must furnish copies of the Shop Drawings for temporary work and methods of construction such as formwork, false work, and for other temporary work and methods of construction.

2.19.2. Seller must furnish copies of scaled drawings showing how the Work of all trades will coordinate to form a complete Installation, and where Work affects existing buildings or parts thereof, and/or existing utilities.

2.20. COMPLIANCE WITH LAWS AND REGULATIONS

2.20.1. Seller must keep informed of governmental regulations that may affect the Work. Seller must observe and comply with, and must cause all agents, employees, Subcontractors and Suppliers to observe and comply with said regulations. Seller shall hold harmless and indemnify Buyer and all its officers, employees and consultants against any liability or claim arising from or based upon the violation of any such regulations by Seller, its agents, employees, representatives or Subcontractors and Suppliers.

2.21. TAXES, UTILITIES, PERMITS, AND FEES

2.21.1. Taxes: Seller must pay any or all taxes imposed by Federal, State, or local governments, that were legally enacted as of the bid date. Seller utilized a 9.25% sales tax rate for proposal basis. Buyer will not furnish any tax exemption certificate or any document designed to exempt Seller from payment of any tax on labor, services, materials, transportation, or any other items provided by Seller pursuant to this Agreement.

2.21.2. Unless otherwise stated in this Agreement, VTA 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 VTA will pay for all utility usage charges. For scheduling purposes, “permanent” power will be available to the Seller prior to the start of the Commissioning phase Functional Testing, pursuant to Section 01810. VTA will plan and schedule such permanent service connections in conjunction with the Seller’s Baseline schedule.

2.21.3. Permits & Fees: Seller must obtain approval from the VTA necessary for the proper execution and completion of the Work, unless otherwise provided in the Contract Documents.

- Sellers must give all necessary notices and comply with all laws, ordinances, rules, regulations and lawful Orders relating to the Work, and to the preservation of the public health and safety.

- If Seller performs any work contrary to such laws, ordinances, Orders, rules and regulations, Seller shall bear all costs attributable thereto.

- Sellers will not be charged for any approvals required by VTA.

- Upon receipt, Seller must Submit four (4) copies of all Seller obtained permits to the Buyer.

- Seller must arrange, coordinate, and pay for all permit related inspections unless otherwise provided in this Agreement.

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

2.22. EQUAL OPPORTUNITY REQUIREMENTS

2.22.1. VTA is an equal opportunity employer. Seller must comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the
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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. Seller must not discriminate against any Subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay or other forms of compensation.

2.23. PATENTS

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

3. SUBCONTRACTORS

3.1. SUBLETTING AND SUBCONTRACTING

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

3.1.2. The Seller is responsible for all Work performed pursuant to the requirements of this Agreement, including Work subcontracted to others. All persons engaged in the Work of the Project are the responsibility of and subject to the control of the Seller.

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

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

3.2. SUBCONTRACTOR’S CONTRACTUAL OBLIGATIONS

3.2.1. By an appropriate agreement, Seller shall require each Subcontractor, to the extent of that Subcontractor’s Work, to be bound to Seller by the terms of the Contract, and to assume toward Seller all the obligations and responsibilities which Seller, by this Agreement, assumes toward Buyer.

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

3.2.3. Seller must make available to each proposed Subcontractor, prior to execution of the subcontract or agreement, copies of this Agreement to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor any terms and conditions of the proposed subcontract or agreement that may be at variance with this Agreement. Each Subcontractor must similarly make copies of all such documents available to its proposed Sub-subcontractors.

3.3. CONTROL OF SUBCONTRACTORS

3.3.1. Seller must:

• Schedule and coordinate the Work of all Subcontractors;
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- 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.

3.4. STOP NOTICES

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

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

4. PROTECTION OF PERSONS AND PROPERTY

4.1. SAFETY PROVISIONS

4.1.1. Seller is solely and completely responsible for conditions of the Sites, 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 Construction Manager, Consultant or any other representative of Buyer is intended to include review of the adequacy of Seller’s safety measures at or near the Sites, at any place of fabrication, or anywhere else.

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

4.1.3. Seller must erect and properly maintain at all times, as required by the conditions and progress of the Work, all appropriate safeguards for the protection of workers and the public, and post danger signs warning against construction hazards, such as fire, toxics, pesticides, chemicals, odors, noise, vibration, equipment operations, obstructions, falling objects, falls and all other construction related hazards.

4.1.4. Seller must designate a responsible member of its organization who will be present on the Sites and who has the duty for prevention of accidents. Prior to starting Work, Seller must submit a letter to the Buyer providing the name and position of the person so designated.

4.2. PUBLIC SAFETY AND CONVENIENCE

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

4.2.2. Seller must keep all walkways clear. Seller must protect pedestrians from falling objects and water runoff.
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4.2.3. Seller’s equipment must enter and leave the Sites 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.

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

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

4.3. PROTECTION AND RESTORATION OF PROPERTY

4.3.1. Seller must immediately repair any damage, arising from or in consequence of the performance of this Agreement, to improvements or property, whether above or below the ground, private or public, within or adjacent to the Project.

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

4.4. PRESERVATION OF CULTURAL RESOURCES

4.4.1. 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.

4.4.2. 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:

4.4.3. Seller to temporarily suspend all operations at the location of such potential resources.

4.4.4. A qualified Consultant must be utilized to assess the value of such resources and make recommendations, at Buyer’s sole expense.

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

4.5. Buyer’s Construction Manager Review

- The Seller’s Work, including submission of Seller-required designs, is subject to a review by the Buyer’s Construction Manager that is limited to general compliance with the design intent.

- The Seller must obtain written approval on 100% design work from Buyer prior to construction work.

- The Construction Manager shall make the requested reviews and shall indicate any exceptions to the Work that is unsatisfactory as completed. Any portions that do not comply with this Agreement shall be corrected by the Seller at the Seller’s expense, and a request for re-inspected made.

- The process of obtaining Construction Manager review of specific Work takes place as follows:
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- The Seller shall inspect the Work prior to requesting inspection by the Construction Manager.
- The Seller will request and coordinate the inspection by Construction Manager.
- The Seller shall notify the Buyer’s project representative to be present at the time of final inspection by the Construction Manager.

1.1. COMMISSIONING REQUIREMENTS

7.7.1. DEFINITIONS

- Acceptable Performance: That level of performance by equipment and Generating Facilities that meets the standards as defined by the equipment/system’s manufacturer and this Agreement. “Acceptable Performance” is confirmed through Functional Performance testing.
- Commissioning (Cx): The process of testing, verification and documentation to demonstrate to the Buyer that the Generating Facilities and equipment function properly, both individually and as a system, in order to meet the facilities operating requirements.
- Commissioning Punchlist: A Seller-maintained sequential listing of all issues brought to light in the commissioning process briefly describing each issue and its eventual disposition, dated and with indication of the party who has assumed responsibility for resolution.
- Inspection and Test Plan-A document prepared by the Seller which defines all tasks and responsibilities throughout the commissioning process, including pre-functional, functional, and performance period testing. It outlines specific tests for the Generating Facilities’ performance, and the means of documenting the outcome of those tests. Documentation is done in order to test and document the Generating Facilities and equipment performance in accordance with the technical specifications and the equipment manufacturers’ field quality control requirements.
- Commissioning Process: The process of demonstrating to the Buyer that the Generating Facilities are installed, functionally tested and capable of being operated and maintained to perform in conformity with this Agreement and manufacturer’s standards. The commissioning process encompasses and coordinates the traditionally separate functions of equipment start-up, control system calibration, testing adjusting and balancing, performance testing, acceptance, system documentation and training.
- Commissioning Status Report / Schedule form: A Table listing all equipment to be commissioned, grouped by system, with fields corresponding to each commissioning stage, form and/or milestone. The fields may be filled with either a percentage indicating progress, or a date indicating a work plan. Remarks are referenced as required.
- Final Commissioning Test Documentation: The compilation of all documents generated throughout the Commissioning process, to include: Completed and signed Commissioning Inspection and Test Plan; completed and signed Performance Period Testing reports, organized by system; Final Commissioning Punchlist; TAB reports.
- Functional Performance Testing (FPT): The dynamic testing of the Generating Facilities (rather than just components) under full operation.
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- Functional Performance Testing Plan (FPTP): These are components of the Inspection and Test Plan, and include the specific functional performance test procedures, checklists and documentation, in a sequential written form, to be developed by the Seller and executed by the Seller.

- OEM: Original Equipment Manufacturer or equipment vendor or supplier of equipment.

- Simulated Condition: Condition that is created for the purpose of testing the response of a system (e.g., applying a hair dryer to a space temperature sensor to see the response in a reheat coil valve).

- 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 (CS): Equipment that act/operate “individually” but are essential to the operation of a Generating Facility.

- 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. The test requirements are not the detailed test procedures. The test requirements are specified in this Agreement.

7.7.2. GENERAL

- Generating Facilities 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 Generating Facilities receive complete operational checkout by installing contractors, vendors and manufacturers.

  - Verify and document equipment and system performance.

  - Verify completeness of Commissioning.

- The commissioning process does not reduce the responsibility of the Seller to perform and complete all Work in accordance with the requirements of this Agreement.

7.7.3. COMMISSIONING TEAM

- 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 may consist of:

  - Buyer representatives
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- Seller's Commissioning Manager, Seller's Project Manager, Seller's Construction Manager, Seller's Lead PV Technician, Seller's Monitoring Team
- Buyer's Construction, Operations and Maintenance Staff

7.7.4. COMMISSIONING PROCESS

- The following activities describe the key, sequential tasks in the Commissioning process. This list is not all-inclusive:
  - Initial Commissioning Scope Meeting: Project Manager, Construction Manager and 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 Inspection and Test Plan.
  - Seller Submission of Commissioning Schedule (part of Baseline Schedule and Official Progress Schedule): The Seller is responsible for identifying key commissioning milestones in the Baseline construction phase schedule. The Seller will be providing the specific Functional Tests.
  - Pre-Commissioning Submittals: The Seller provides submittals as set forth herein.
  - Seller develops the Inspection and Test Plan (including Functional Performance Testing Plan (FPTP)):
    - Start-up and Initial Operation of Systems and SC: This is the initial Seller-effort to "de-bug" the systems to be commissioned. The actual performance of Functional Performance Testing (FPT) is NOT to be the first time Systems/SC are run and tested.
    - Performance of Functional Performance Testing: Following the steps of the Inspection and Test Plan, the Seller shall perform the full range of checks and tests described in the plan, to verify that Generating Facilities, and interfaces between the Generating Facilities function in accordance with the requirements of this Agreement and the standards defined by the equipment manufacturers (see the definition of "Acceptable Performance"). In this context, "function" includes all modes and sequences of control operation, all interlocks and conditional control response, and all specified responses to emergency conditions.
    - Completion of Functional Performance Testing and documentation: The Seller shall verify all items are complete and certify and submit to Buyer for acceptance so the commissioning process can continue into the next commissioning phase. The purpose of Functional Performance Testing is to verify and validate that all systems and equipment are ready for its intended performance.
    - O&M Manuals: Seller shall prepare and maintain O&M Manuals and submit one copy to the Buyer.
    - Regulatory Testing and Certifications: (fire alarm, PG&E interconnect, etc.): shall be scheduled and performed prior to related functional performance testing.
  - Scheduling:
    - Commissioning milestones that must be included in the Seller's Construction Schedule shall be, but not be limited to:
      - Submission of Flash Test Data, serial numbers and warranty information;
      - Buyer's receipt of the PFTP;
EXHIBIT 5 – ENGINEERING AND CONSTRUCTION REQUIREMENTS

- Commencement of Functional Performance Testing;
- Site observation: Buyer reserves the right to periodic visits to the site, to witness equipment and system installation, attend testing and monitor project schedule and progress.

7.7.5. SELLER’S COMMISSIONING RESPONSIBILITIES

- The following is a general summary of the Seller’s overall responsibilities:
  - The Seller has overall responsibility to ensure Acceptable Performance of all systems to be commissioned in accordance with this Section;
  - Coordinate and direct all Seller Commissioning Activities;
  - Provide all submittals required;
  - Ensure that the Work is performed according to the requirements of the Contract and the accepted Inspection and Test Plan;
  - Attend Commissioning Plan Scoping Meeting and additional meetings, as required by this Agreement. Invites their subcontractors as appropriate to expedite Commissioning process;
  - Include all key commissioning activities in this Agreement;
  - Operation of Generating Facilities throughout the commissioning process, in accordance with the procedures and the Functional Performance Test Plan;
  - Provide Buyer at least twenty-one (21) calendar day notification, when Generating Facilities are ready for test;
  - Seller shall provide and supervise Equipment or System Certified Manufacturer Technicians for startup and for Pre-functional activities;
  - Execution of Functional Performance Testing:
  - Perform Functional Performance Testing in accordance with the Inspection and Test Plan;
  - Seller shall provide and supervise SC or System Manufacturer Certified Technicians for initial operation of equipment for Functional Performance Testing Activities;
  - Prepare O&M manuals including updating record drawings;
  - Professionally maintain record drawings and system single-line schematics and diagrams in as installed condition for all systems that are installed. To be included in the O&M manual and used during the Commissioning process;
  - Prepare and submit two copies of the Final Commissioning Test Documentation to the Buyer. Additionally, maintain all data and information gathered as part of the commissioning process, such as test reports, completed FPT documentation, etc.;
  - Certifying complete execution of all Pre-functional checklists and related supporting documents, which shall include:
    - Executed Inspection & Test Plan (completed, signed)
    - Completed punchlist
    - Commissioning Report
    - Flash Test Data
    - Record Drawings
EXHIBIT 5 – ENGINEERING AND CONSTRUCTION REQUIREMENTS

- 7 day performance analysis
  - Compiling the results for submission to the Buyer during an on-boarding meeting; and
  - Coordinating with the Buyer and certifying the execution of all re-testing efforts including compiling and submitting associated documentation.

7.7.9 EXECUTION

GENERAL

- Testing must be conducted under design operating conditions as defined within this Agreement and accepted Inspection and Test Plan, forms and checklists.
- Functional Performance Testing must be completed prior to commencing the seven-(7) calendar day Performance Testing Monitoring and Evaluation period.
- All elements of the Generating Facilities must be tested to demonstrate that all systems satisfy all requirements of this Agreement.
- Seller or their subcontractor shall provide all special testing materials and test equipment.
- Acceptance Documentation: A copy of the accepted Functional performance test results certified by the Seller, as meeting the specifications for each Generating Facility or piece of equipment shall be included within each copy of the Corrected Final Operations and Maintenance manuals.

FUNCTIONAL PERFORMANCE TESTING

- 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.
- Provide copies of all test reports and records to the Buyer within two weeks after all testing is performed.
- Functional Performance Testing will require that the Seller operate Generating Facilities through a full range of checks and tests in order to determine if SC and Generating Facilities, and interfaces between Generating Facilities, function in accordance with this Agreement. In this context, “function” includes:
  - All modes and sequences of control operation;
  - Starting, stopping, and proper operations; and
  - Compliance with all specified responses to emergency conditions.

- Functional Performance Tests (FPT)
  - The FPT shall define step-by-step procedures, expected acceptance results, test equipment required, and incorporate final Seller and CQCM certification prior to Buyer’s review/acceptance.
  - All normal modes of system operation, all failure, alarm and emergency modes;
  - Operation during and recovery from power failures, network failures, and emergencies;
  - Interaction with remote monitoring/control devices; and
  - Each test procedure shall be performed under conditions that simulate normal operating conditions and/or modes of operation as closely as possible.
EXHIBIT 5 – ENGINEERING AND CONSTRUCTION REQUIREMENTS

- Seller shall make all necessary Generating Facility modifications to produce the specified conditions necessary to execute the test.

COMMISSIONING ACCEPTANCE PROCEDURES

- Seller 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, Seller certifies the Work is complete in accordance with this Agreement.

NON-CONFORMANCE

○ If acceptable performance is not achieved:
  - If there is no dispute on the deficiency and the responsibility to correct it:
  - Seller documents the deficiency and the adjustments oralterations required to correct it.
  - Seller corrects the deficiency and notifies the Buyer that the equipment is ready to be retested.

OPERATIONS & MAINTENANCE DATA

- The Seller shall compile O&M Documentation for each piece of equipment or Generating Facility and maintain one copy and submit two copies to the Buyer.

FINAL COMMISSIONING TEST DOCUMENTATION

- As a condition of achieving Milestone Completion, the Seller’s CQCM shall compile and submit a Final Report containing all documents generated throughout the Commissioning process.

ELECTRICAL

- Electrical Metering, Monitoring, and Control Systems;
- Automatic Transfer Switches;
- Medium Voltage Interrupter Switch, as required; and
- All other necessary to fully comply with the performance of the Generating Facilities.
## EXHIBIT 6 - CONTRACT PRICE

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Annual escalator: 3%
EXHIBIT 7 – OPERATIONS FORECASTS, SCHEDULING, AND MONITORING

OPERATIONS REPORTS, SCHEDULING PROTOCOLS and MONITORING

1 Monthly Operations Report

No later than 10 days after the end of a calendar month, Seller will provide a monthly performance report that details the Generating Facility’s actual versus expected generation over the month. The report will also include environmental benefits from the Generating Facilities as well as maintenance records. Such report will detail all planned and Forced Outages during the period.

2 Forced Outages

2.1 “Forced Outages” are any unplanned reduction in the capability of a generating facility.

2.2 Forced Outages not previously included in Monthly Operations Reports described above shall be reported by Seller to Buyer within eight (8) hours of such Outages.

2.3 If possible at the time of the Forced Outage, the notice by Seller to Buyer shall include the reason for the Outage (if known), expected duration of the Outage, the capacity reduction and actions taken to mitigate such Outage.

3 Return to Service

Seller shall notify Buyer within eight (8) hours whenever the Generating Facility is returned to service.

4 Notices

All Schedules, Schedule changes, Forced Outages, and planned outages are to be submitted to Buyer by phone, fax or email to the following persons:

Tom Fitzwater
Environmental Programs & Resources Management Manager
3331 North First Street, Building B
San Jose, CA 95134
Phone- 408-321-5705
Fax- 408-321-5787
tom.fitzwater@vta.org

Mark Mahaffey
Operations Manager
3331 North First Street
San Jose, CA 95134
Phone- 408-321-7058
Fax- 408-955-0953
mark.mahaffey@vta.org

5 Meters, Communications, and Meteorological Station Requirements and Monitoring

5.1 Metering

Proposers shall install utility-grade revenue, electronic, bi-directional meter, with a 0.5% (one half percent) or better accuracy. It should be capable of recording for each 15-minute interval demand (KW),
EXHIBIT 7 – OPERATIONS FORECASTS, SCHEDULING, AND MONITORING

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 be a CAISO-certified revenue grade utility meter type ABB-Alpha Plus or equivalent with full modem. The meter shall have dial up or Internet capability and shall provide a pulse output to the data acquisition system. Seller shall install the appropriate EUSERC meter socket and enclosure for this meter.

5.2 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 shall capture and store data at a minimum of 15-minute intervals and shall include a data-logger, network interface device for data retrieval, National Electrical Manufacturers Association, NEMA 4 enclosure, a dry bulb temperature-measuring device with a radiation shield, thermocouples placed throughout the arrays that measure PV module temperature, anemometer, and solar sensor. All measurement equipment must be “revenue” grade, i.e., accurate enough to determine the revenue that would be paid based on the power generated.

Minimum Accuracy Ranges for the above are:

Energy & Power = Revenue Grade (0.5%)  
Ambient Temp = +/- 1.0 deg C.  
Solar Irradiance = 5% max, typically 3% in natural light  
PV Panel Temp = +/- 1.0 deg. C  
Wind Speed = within 0.1 m/s for the range 5-25 m/s

The DAS system shall allow Buyer to view current and historical data over the Internet, in 15-minute intervals. Seller 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 this Agreement.
EXHIBIT 7 – OPERATIONS FORECASTS, SCHEDULING, AND MONITORING

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. Seller will ensure that automatic communication between the PV system’s DAS and designated Buyer-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 this Agreement, the actual kWh produced will be compared to the potential kWh given metered solar radiation and the expected degradation of the Generating Facilities over time. This information will be monitored on a monthly basis.
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Total: 9000

Note: The table represents the expected quantities for each date.
EXHIBIT 9 – INSURANCE REQUIREMENTS

B3A - DESIGN PHASE INSURANCE REQUIREMENTS

Insurance

Without limiting Seller's indemnification provided in the Agreement, 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 shall accompany the certificate.

This verification of coverage shall be sent to the requesting VTA department, unless otherwise directed. Seller shall not commence the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the VTA. This approval of insurance shall neither relieve nor decrease the liability of 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 the VTA's Risk Manager.

C. 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 the VTA:
EXHIBIT 9 – INSURANCE REQUIREMENTS

Additional Insured Endorsement, which shall read:

"VTA, and members of the Board of Directors of the VTA, and the officers, agents, and employees of the VTA, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the VTA, 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. 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 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
EXHIBIT 9 – INSURANCE REQUIREMENTS

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 Seller and any approval of said insurance by the VTA 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 Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The VTA acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of Seller. However, this shall not in any way limit liabilities assumed by Seller under this Agreement. Any self-insurance shall be approved in writing by the VTA’s Risk Manager 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, Seller shall require each of its subcontractors of any tier to carry the aforementioned coverages (except in the case of Professional Errors and Omissions Insurance where only engineering or design firms must comply with such insurance requirement), or Seller may insure subcontractors under its own policies.

4. The VTA reserves the right to withhold payments to Seller in the event of material noncompliance with the insurance requirements outlined above.

B1 - CONSTRUCTION PHASE INSURANCE REQUIREMENTS

Insurance

Without limiting Seller’s indemnification provided in the Agreement, 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.

This verification of coverage shall be sent to the requesting VTA Project Manager, 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 the VTA. This approval of insurance shall neither relieve nor decrease the liability of Seller.

B. Qualifying Insurers
EXHIBIT 9 – INSURANCE REQUIREMENTS

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 VTA’s Risk Manager.

2. When surety bonds are required, they shall be issued by companies that meet the following minimum requirements:
   a. For projects in excess of $250,000:
      1. A California admitted surety with either a current A.M. Best rating of A IV or a current Standard and Poors (S&P) rating of A.
      
         OR

      2. An admitted surety insurer which complies with the provisions of the Code of Civil Procedure, Section 995.660*.

         OR

      3. In lieu of 1 & 2, a company of equal financial size and stability that is approved by the VTA’s Risk Manager.

* California Code of Civil Procedure Section 995.660 in summary, states that an admitted surety must provide: 1) the original, or a certified copy of instrument authorizing the person who executed the bond to do so, within 10 calendar days of receipt of a request to submit the instrument; 2) a certified copy of the Certificate of Authority issued by the Insurance Commissioner, within 10 calendar days of receipt of a request to submit the copy; 3) a certificate from VTA Clerk VTA that Certificate of Authority has not been surrendered, revoked, canceled, annulled or suspended, within 10 calendar days of receipt of the certificate; 4) copies of the surety’s most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10, within 10 calendar days of receipt of a request to submit the statements.

C. 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. Limits may be satisfied through a combination of primary and excess policies.

2. General liability coverage shall include:
EXHIBIT 9 – INSURANCE REQUIREMENTS

a. Premises and Operations

b. Contractual Liability expressly including liability assumed under this Agreement. If the Contractor 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.

c. Personal Injury liability

d. Owners' and Contractors' Protective liability

e. Severability of interest

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

g. Property Damage liability

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

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

   “VTA, and members of the Board of Directors of the VTA, and the officers, agents, and employees of the VTA, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the VTA, 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 VTA. Such insurance may be included by endorsement or as part of policy wording as evidenced on insurance certificate.

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

   Insurance afforded by this policy shall provide X, C and U Hazards coverage. Such insurance may be included by endorsement or as part of policy wording as evidenced on insurance certificate.

4. **Claims Made Coverage**
EXHIBIT 9 – INSURANCE REQUIREMENTS

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. Seller's Equipment

Seller shall not be required to insure owned or leased equipment present on site. Seller shall indemnify, defend, and hold harmless the VTA for any loss or damage to its equipment except in the circumstance that such loss or damage is the result of actions performed by the VTA or a VTA representative.

D. 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 Seller and any approval of said insurance by the VTA 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 Seller pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The VTA acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of Seller. However, this shall not in any way limit liabilities assumed by Seller under this Agreement. Any self-insurance shall be approved in writing by the VTA 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, Seller shall require each of its subcontractors of any tier to carry the coverages as listed in the Design Phase Insurance Requirements (except in the case of Professional Errors and Omissions Insurance where only engineering or design firms must comply with such insurance requirement), or Seller may insure subcontractors under its own policies.

4. The VTA reserves the right to withhold payments to Seller in the event of material noncompliance with the insurance requirements outlined above.

B5 – INSURANCE REQUIREMENTS FOR LEASE AGREEMENT

Insurance

Without limiting Seller's indemnification in the Agreement, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect throughout the term of the Lease:

A. Evidence of Coverage

Prior to commencement of the Lease, Seller 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.

For long-term leases a periodic review/change of insurance requirements may be made by agreement of Seller and the VTA every five years to ensure appropriate coverage by VTA 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 VTA's Risk Manager.

C. 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
EXHIBIT 9 - INSURANCE REQUIREMENTS

b. General aggregate - $4,000,000
c. Personal Injury - $2,000,000

Limits may be satisfied by a combination of primary and excess policies.

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

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

   Additional Insured Endorsement, which shall read:

   “VTA, and members of the Board of Directors of the VTA, and the officers, agents, and employees of the VTA, individually and collectively, as additional insureds.”

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the VTA, 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

   Seller shall also provide All Risk Property insurance, including fire insurance, on the Generating Systems. 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 Generating Systems, and Seller shall name VTA as an additional insured.
Exhibit 10

FORM OF

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”), dated as of ____________ , 2011 ("Effective Date"), is by and between Solar Star California XXI, LLC, a Delaware limited liability company ("Lessees"), and Santa Clara Valley Transportation Authority, a California public entity created by the California State Legislature pursuant to Section 100000 of the Public Utilities Code ("Lessor").

Recitals

A. Lessee and Lessor have entered into that certain Power Purchase Agreement, dated as of the Effective Date (the “PPA”), pursuant to which Lessee has agreed to engineer, construct and install the Generating Facility on the VTA North Division Facility, as described in Exhibit 3 to the PPA, and provide Lessor with the Output. Capitalized terms used herein but not defined herein (including in the recitals hereto) shall have the meanings given in the PPA;

B. In order to construct and install the Generating Facility and provide the Output, Lessee requires access to certain real property owned by Lessor as identified in Exhibit A;

C. In connection with the foregoing, Lessee desires that Lessor lease, and Lessor desires to lease to Lessee, the Site (defined below); and

D. The Lessee may finance the Generating Facility and, in connection therewith, grant a first priority security interest therein in favor of the Financing Party.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Lease. Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the real property listed in Exhibit A (hereinafter, the “Site”), for the sole purpose of constructing, installing, owning, operating, and maintaining the Generating Facility. It is acknowledged that Lessor is a public transportation agency and that Lessor will be parking buses owned and operated by Lessor under the Generating Facility (which are bus canopies), and therefore Lessor and Lessee agree that Lessee shall not have exclusive access to and possession of the Site. Lessee’s use of the Site, other than the portions of the Site upon which the Generating Facility is installed (namely the portions of the Site upon which the supporting pillars of the Generating Facility are affixed to the real property), is subject to and subordinate to the use of the Site by Lessor, and the use of the Site by Lessee shall not unreasonably interfere with Lessor’s bus operations at the Site. Lessor’s use of the portions of the Site upon which the supporting pillars of the Generating Facility are affixed to the real property is subject to and subordinate to the use of such portions of the Site by Lessee, and the use of such portions of the Site by Lessor shall not unreasonably interfere with Lessee’s construction, installation, ownership, operation and maintenance of the Generating Facility. Upon the completion of the installation of the Generating Facility, Lessee shall provide Lessor with “as-built” drawings setting forth in detail the location of
all components of the Generating Facility. Subject to Section 5, Lessor hereby also grants to Lessee, for a period co-terminous with the Lease, a right of way to access the Site across or through the Premises and any surrounding or nearby site owned by Lessor, passage through which is necessary or convenient to gain access to the Generating Facility or the Site.

2. **Benefits.** Lessee shall pay Lessor one U.S. dollar ($1.00) on the Actual Commercial Operation Date as and for rent of the Site.

3. **Condition of Site and System Construction.**

   (a) Lessor hereby consents to the construction of the Generating Facility, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections, on the Site.

   (b) Lessor acknowledges that the installation of all or a portion of the Generating Facility may require physically mounting and adhering of the Generating to the ground and consents to such mounting and adhering, as applicable.

4. **System Installation, Operation, Ownership, Maintenance and Removal.**

   (a) Lessee shall have the right from time to time during the term hereof and in accordance with the PPA:

   (i) to construct, install, operate and monitor the Generating Facility in and on the Site;

   (ii) to maintain, clean, repair, replace and dispose of part or all of the Generating Facility;

   (iii) to add or remove the Generating Facility or any part thereof;

   (iv) to access the Site with guests or consultants for advertising and other promotional purposes, including without limitation the taking of photographs and filming of images, which access shall occur during normal business hours, at such other times as are acceptable to the Lessor in its reasonable business judgment, and provided Lessee does not interfere with the Lessor’s operations; and

   (v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in subparagraphs (i) through (iv) of this Section 4(a).

   (b) Lessor acknowledges and agrees that Lessee or its affiliate is the exclusive owner and operator of the Generating Facility and that all equipment comprising the Generating Facility shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the Generating Facility is or may be affixed to any real property of Lessor. Lessor shall have no right, title or interest in the Generating Facility or any component thereof, notwithstanding that the Generating Facility may be physically mounted or adhered to the Site.
Unless the responsibility of the Lessor in accordance with the terms of this Lease or the PPA, Lessee shall maintain, repair and replace the Generating Facility at its sole cost and expense.

(c) Lessor represents and warrants that Lessor has been duly authorized to enter into this Lease by all necessary action.

(d) Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber any portion of the Site unless Lessor shall have given Lessee at least thirty (30) days’ prior written notice thereof, which notice shall identify the transferee, the Site to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the rights in the Site granted in Section 1 of this Lease shall run with the Site and survive any transfer of any Site while the PPA and this Lease are in effect. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledgee or party to whom a lien has been granted to execute and deliver to Lessee a document pursuant to which such party acknowledges and consents to the Lessee’s rights in the Sites as set forth herein.

(f) Lessee shall keep the Site free from any mechanic’s liens and shall pay when due all invoices arising out of any work performed or materials furnished to or at the Site. If any claim of mechanic’s lien is recorded against title to the Site, Lessee shall bond against or discharge same within thirty (30) days after Lessee’s receipt of written notice that such lien has been recorded.

(g) Lessee’s removal of the Generating Facility shall be governed by Paragraph 10.4 of the PPA.

5. Access to Site. Lessor shall provide Lessee with access to the Site as reasonably necessary to allow Lessee to perform the installation work and to own, operate and maintain the Generating Facility as contemplated in the PPA, including, without limitation, ingress and egress to and from the Site for Lessee and its employees, contractors and sub-contractors and access to electrical panels and conduits to interconnect the Generating Facility with the electrical wiring of the Site. Lessor shall use commercially reasonable efforts to designate sufficient space, adjacent to the Site, for the temporary storage and staging of tools, materials and equipment (collectively, “Equipment”) by Lessee and for the parking of Lessee’s construction crew vehicles, temporary construction trailers and facilities reasonably necessary during the installation work, removal work and access for rigging and material handling. Lessor shall designate a reasonable area adjacent to the Site for construction laydown by Lessee. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation work, subject to compliance with Lessee’s safety rules, but shall not interfere with the installation work or handle any Equipment or the Generating Facility without prior written authorization from Lessee. In addition, Lessor shall grant Lessee access to the Site as reasonably necessary to allow Lessee to perform operations and maintenance work, including, without limitation, ingress and egress to and from the Site for Lessee and its employees, contractors and subcontractors and local electric utility personnel. Lessee shall perform operations and maintenance work in a manner that minimizes inconvenience to and interference with Lessor and Lessor’s invitees’ and customers’ use of the Site to the extent commercially practicable. Notwithstanding any provisions herein, Lessee’s access to and use of the Site is subject to Section 1 herein.

6. Representations and Warranties, Covenants of Lessor. Lessor represents and warrants to Lessee that there are no circumstances known to Lessor or commitments to third parties
(including, without limitation, mortgages, liens, or activities that may adversely affect the Generating Facility’s direct or indirect exposure to sunlight) that may damage, impair or otherwise adversely affect Lessee’s rights under this Lease or any Generating Facility and/or its function. Lessor represents and warrants that Lessor has lawful title to the Site and full right to enter into this Lease. Lessor will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Generating Facility or its function (including activities that may adversely affect the Generating Facility’s direct or indirect exposure to sunlight). Lessor will not conduct maintenance to the Site that is reasonably likely to damage, impair or otherwise adversely affect any Generating Facility or its function.

7. **Term.** The term ("Term") of this Lease shall commence on the Effective Date and terminate on the date that is one hundred eighty (180) days after the expiration or earlier termination of the PPA. Lessee may terminate this Lease at Lessee’s sole discretion at any time upon three (3) months’ written notice to Lessor. In addition, Lessee may terminate this Lease effective immediately upon provision of written notice to Lessor if (a) within one hundred eighty (180) days of the Effective Date, Lessee determines that a Generating Facility cannot be installed and operated according to Lessee’s investment criteria; or (b) at any time during the Term, Lessee determines that the Generating Facility or operation thereof is impaired at any Site due to lack of direct or indirect exposure to sunlight as a result of the acts or omissions of Lessor or Lessor’s agents, employees or contractors.

8. **Insurance.** Each of Lessee and Lessor shall obtain and maintain the insurance coverages required under the PPA.

9. **Taxes.** Each of Lessee and Lessor shall pay taxes, fees, excises, assessments, bonds, levies, or similar charges as required under the PPA.

10. **Liability and Indemnity.**

   (a) **General Indemnification.**

   (i) **By Lessee.** Lessee shall indemnify, defend and hold harmless Lessor, its affiliates, officers, agents and employees (the “Lessor Parties”) from and against any claim, demand, lawsuit, or action of any kind (collectively, “Losses”) for injury to or death of persons, including, but not limited to, employees, invitees, guests, and consultants of Lessee or Lessor, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Lessor, or other loss or damage incurred by Lessor, arising out of (A) the negligent acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors on or at the Premises or the Site in connection with this Lease; or (B) the material breach by Lessee of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Parties in defending such Losses, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee’s obligations pursuant to this Section 10(a)(i) shall not extend to Losses for liability to the extent attributable to the negligence, fraud or willful misconduct of Lessor, the Lessor Parties, or their respective contractors, successors or assigns, or to the acts of third parties. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Parties in enforcing this indemnity, including reasonable attorney fees.
(ii) **By Lessor.** Lessor shall indemnify, defend and hold harmless Lessee, its affiliates, officers, agents and employees (the "Lessee Parties") from and against any Losses for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of property, including, but not limited to, property of either Lessee or Lessor, or other loss or damage incurred by Lessee, arising out of: (A) negligent acts or omissions or willful misconduct of Lessor, its agents, officers, directors, employees, representatives, or contractors; (B) the material breach by Lessor of any of its obligations under this Lease; or (C) the inaccuracy of any representation or warranty of Lessor contained in this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Parties in defending such Losses, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessor's obligations pursuant to this Section 10(a)(ii) shall not extend to Losses for liability to the extent attributable to the negligence, fraud or willful misconduct of Lessee, the Lessee Parties, or their respective contractors, successors or assigns, or the acts of third-parties. Lessor shall pay any cost that may be incurred by Lessee or the Lessee Parties in enforcing this indemnity, including reasonable attorney fees.

(b) **Environmental Indemnification.**

(i) **By Lessor.** Lessor shall indemnify, defend and hold harmless Lessee and the Lessee Parties from and against any and all Losses suffered or incurred by any such party by reason of or resulting from (A) any Release on the Site caused by Lessor or the Lessor Parties or any Release on other property in the vicinity of the Site caused by Lessor or the Lessor Parties to the extent any such Release impacts the Site; or (B) any environmental claim from any third party with regard to any violation or alleged violation of any Environmental Laws by Lessor or the Lessor Parties or any actual, threatened or alleged Release affecting the Site by Lessor or the Lessor Parties. For the purposes hereof, (1) "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment in violation of any Environmental Laws; and (2) "Environmental Laws" shall mean all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species and vegetation), including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of hazardous materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials.

(ii) **By Lessee.** Lessee shall not use, generate, store or dispose of any hazardous materials on, under, or with the Site in violation of any law or regulation. Lessee shall indemnify, defend and hold harmless Lessor and the Lessor Parties from and against any and all Losses suffered or incurred by any such party by reason of or resulting from (A) any Release on the Site caused by Lessee or the Lessee Parties or any Release on other property in the vicinity of the Site caused by Lessee or the Lessee Parties to the extent any such Release impacts the Site; or (B) any environmental claim from any third party with regard to any violation or alleged violation of any Environmental Laws by Lessee or the Lessee Parties or any actual, threatened or alleged Release affecting the Site by Lessee or the Lessee Parties.
(c) **Liability.** Notwithstanding any provision in this Agreement to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Agreement.

(d) **Survival.** The indemnities contained in this Section 10 shall survive the expiration or earlier termination of this Lease.

11. **Assignment.**

(a) Except as permitted in the PPA, neither party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.; provided, however, that Lessee may in its sole discretion and without the consent of Lessor assign any of its rights, duties or obligations under this Agreement to (i) one or more of its affiliates, (ii) one or more third parties in connection with a sale-and-leaseback or other financing transaction, (iii) any person or entity succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction (any of the foregoing being a “**Permitted Transfer**”), provided that the transferee executes an assumption of this Lease. Lessee shall provide the assumption of lease to Lessor within 15 days of the occurrence of any such Permitted Transfer.

(b) With respect to a Permitted Transfer pursuant to clause (ii) in Section 11(a), Lessor acknowledges and agrees that, upon receipt of written direction from a financing-transaction assignee of Lessee (collectively, “**Lender**”), and notwithstanding any instructions to the contrary from Lessee, Lessor will recognize Lender, or any third party to whom Lender has reassigned the rights of Lessee under this Lease, as the proper and lawful Lessee of the Site and as the proper and lawful successor to Lessee with respect to access to the Site across or through the Premises and fully entitled to receive the rights and benefits of Lessee hereunder so long as Lender (or its assignee) performs the obligations of Lessee hereunder. Lessor shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Lessor shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee. Lessor shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

12. **Provisions Benefiting Lender.**

(a) Lessor agrees to provide written notice to Lender, provided that Lessor shall have previously received written notice of Lender’s designated address, of any act or event of default of Lessee under the Lease of which Lessor has knowledge that would entitle Lessor to cancel, terminate, annul, or modify the Lease or dispossess or evict Lessee from the Site or otherwise proceed with enforcement remedies against Lessee, and Lender shall have the same amount of time as Lessee, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Lessee under the Lease; provided that in no event shall Lender be obligated to cure any such default.
(b) Subject to the terms and conditions hereof, Lessor hereby subordinates any lien it may have in and to the Generating Facility that is or may from time to time hereafter be located at the Site in connection with the construction, installation, operation, maintenance and/or repair of the Generating Facility, and to which Lessee has granted or will grant a security interest to Lender (all such property and the records relating thereto shall be hereafter called the "Collateral") to the lien of Lender; provided, however, that this subordination shall not prevent Lessor from exercising any right or remedy against Lessee to which Lessor may be entitled under the terms of the Lease or the PPA or as may be provided by applicable law; nor shall it prevent Lessor from realizing upon any lien it may have on any property of Lessee, including the Collateral, so long as Lessor recognizes Lender’s prior right to the Collateral described above. Lessor recognizes and acknowledges that any claim or claims ("Claims") that Lender has or may have against such Collateral by virtue of any lien or security interest, are superior to any lien, security interest, or claim of any nature that Lessor now has or may hereafter have to such Collateral by statute, agreement or otherwise. The subordination provided for herein shall be effective until the discharge of the Claims. Lessor further agrees to notify any purchaser of the Site, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing subordination of Lessor’s lien, which shall be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Lender. Lessor agrees to execute such documents as may be required by Lender to evidence the foregoing subordination and to obtain similar executed documents from any third party who now has or obtains in the future an interest in the Site, including any lenders to Lessor.

(c) Lessor consents to Lender’s security interest in the Collateral and waives all right of levy for rent and all claims and demands of every kind against the Collateral, such waiver to continue so long as any sum remains owing from Lessee to the Lender. Lessor agrees that the Collateral shall not be subject to distraint or execution by, or to any claim of, Lessor.

(d) Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Collateral, and agrees that Lender may access the Site to inspect the Collateral with 72 hours notice and only during normal business hours.

13. Amendments. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

14. Notices. Any notice required or permitted to be given in writing under this Lease shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 14). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below, unless a change of address notice has been delivered by a party to the other party in accordance with this Section 14:

If to Lessor:
15. **Waiver.** The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

16. **Remedies Cumulative.** No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

17. **Headings.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

18. **Choice of Law.** This Lease shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles).

19. **Binding Effect.** This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

20. **Counterparts.** This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or “pdf” signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

21. **Entire Agreement.** This Lease, the PPA, and the Performance Guarantee Agreement between Lessor and Lessee dated as of the Effective Date represent the full and complete
agreements between the parties hereto with respect to the subject matter contained herein and 
therein and supersede all prior written or oral agreements between said parties with respect to said 
subject matter. In the event of any conflict between the provisions of this Lease and the provisions 
of the PPA, the provisions of the PPA shall govern and control.

22. **Further Assurances.** Upon the receipt of a written reasonable request from the other 
party, each party shall execute such additional documents, instruments and assurances and take such 
additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither 
party shall unreasonably withhold, condition or delay its compliance with any reasonable request 
made pursuant to this section. Lessee may record a memorandum of this Lease in the land registry 
or title records of the county where the Site is located or other applicable government office. From 
time to time, within seven (7) days of a written request by Lessee (or its lenders), Lessor shall 
provide an estoppel certificate with respect to Lessee’s compliance with the terms of this Lease and 
attesting to Lessor’s knowledge of any known issues of noncompliance by Lessee.

23. **Estoppel.** Either party hereto, without charge, at any time and from time to time, 
within five (5) business days after receipt of a written request by the other party, shall deliver a 
written instrument, duly executed, certifying to the requesting party, or any other person, firm or 
corporation specified by the requesting party:

(a) that this Lease is unmodified and in full force and effect, or if there has been 
any modification, that the same is in full force and effect as so modified, and identifying any such 
modification;

(b) whether or not to the knowledge of such party there are then existing any 
offsets or defenses in favor of such party against enforcement of any of the terms, covenants and 
conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of 
such party the other party has observed and performed all of the terms, covenants and conditions on 
its part to be observed and performed, and if not, specifying the same;

(c) the dates to which amounts due have been paid; and

(d) such other information as may be reasonably requested by the requesting 
party. Any written certificate given hereunder may be relied upon by the recipient thereof, except 
to the extent the recipient has actual knowledge of facts contained therein.

[signature page to follow]
IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

SOLAR STAR CALIFORNIA XXI, LLC,
a Delaware limited liability company

By: ____________________________

Name: __________________________

Title: __________________________

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY,
a California public entity

By: ____________________________

Name: __________________________

Title: __________________________
EXHIBIT A

Legal Description of Site

See attached

[Attach a legal description of all of the property owned by the host and on which the array is located.]
EXHIBIT 11 – FORM OF PERFORMANCE GUARANTEE

Performance Guarantee Agreement

Between

Solar Star California XXI, LLC

And

Santa Clara Valley Transportation Authority
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GENERATING FACILITY PERFORMANCE GUARANTEE AGREEMENT

THIS GENERATING FACILITY PERFORMANCE GUARANTEE AGREEMENT ("Agreement") dated [ ], is entered into by and between Solar Star California XXI, LLC, a Delaware limited liability company ("Provider"), with its principal place of business at 1414 Harbour Way South, Richmond, California 94804, and Santa Clara Valley Transportation Authority, a California public entity created by the California State Legislature pursuant to Section 100000 of the Public Utilities Code ("Customer"). In this Agreement, Provider and Customer are referred to individually as a “Party” and collectively as the "Parties."

Recitals

WHEREAS, Provider has separately entered into a Power Purchase Agreement ("PPA") with Customer pursuant to which Customer will purchase from Provider solar power produced by the Generating Facility identified on Exhibit A: Generating Facilities; and

WHEREAS, Provider and Customer desire to enter into an agreement pursuant to which Provider will guarantee annual energy generation by the Generating Facility.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, Provider and Customer agree as follows:

ARTICLE I. DEFINED TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

Actual Commercial Operation Date shall have the meaning given to such term in the PPA.

Actual Generation means, for each Guarantee Year during the Term, the Generating Facility’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.03.

Actual Solar Insolation means, with respect to any Guarantee Year, the Solar Insolation as recorded by the Data Acquisition System at the Customer Site(s)
Avoided Energy Price per kWh means the amount that Customer will be paid for each Kilowatt-hour which is the difference, if any, between the average of the actual cost per Kilowatt-hour paid by Customer to the relevant utility or other power supplier during the True-up Period minus the relevant PPA price per Kilowatt-hour, all as set out in Exhibit C: Avoided Energy Price.

**Customer Responsibilities** shall have the meaning set forth in Section 4.02.

**Data Acquisition System or DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Sites: actual AC electricity production of the Generating Facility (in kWh) and solar irradiance (in W/m²).

**Expected Energy** means, for the Generating Facility in a specified Guarantee Year, the kilowatt hours set forth on Exhibit B: Expected Energy.

**Force Majeure** means:

- A Force Majeure Event, as defined in the PPA, occurs;

- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party; or

- Externally caused outages, including:

  - Network Disturbance Hours: hours during the Period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) disconnected the inverters or Facility from the utility network and prevented energy from being evacuated from the Facility;

  - Network Outage Hours: hours during the Period when a failure in the distribution network or in the Connection Infrastructure prevented energy from being evacuated from the Facility;

  - Customer Caused Hours: hours during the Period when the equipment or Facility is off-line due to Customer or third party required outages; or

  - Major Maintenance Hours: hours during the Period when the equipment or Facility is off-line due to pre-Approved major maintenance work.
Generating Facility means Customer’s photovoltaic Generating Facility located at the Site and as more particularly identified in Exhibit A: Generating Facilities.

Guaranteed Level means ninety percent (90%) of the Expected Energy for a Guarantee Year for a specified Generating Facility.

Guarantee Year means each successive 12-month period during the Term commencing on the first day of the Term.

In Compliance Letter shall have the meaning set forth in Section 4.03.

Kilowatt-hour or kWh means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of the Revenue Meter.

Noncompliance Period shall have the meaning set forth in Section 4.03.

Out of Compliance Letter shall have the meaning set forth in Section 4.03.

PPA means the agreement(s) described in the recitals.

PVSim means the software program utilized by Provider to predict the amount of energy a Generating Facility will produce in an average year which currently has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

Revenue Meter means the principal meter of a given Generating Facility from which energy output is read and documented.

SEMMY or Simulated Energy in a Measured Meteorological Year, means, with respect to any Guarantee Year, Year 1 AC Energy output of the Generating Facility simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

SETMY or Simulated Energy for a Typical Meteorological Year, means the Year 1 AC Energy output of the Generating Facility simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

Site means the real estate where the Generating Facility and any support structure are located including any building and building roof that touch or support the Generating Facility.
**Subcontractor** means, any person or firm who contracts with Provider or with any contractor of any tier operating under a contract with Provider to provide or furnish any supplies, materials, equipment, or services of any kind, whether design, construction, service, or otherwise, for the Generating Facility.

**Term** means the period of time commencing on the Actual Commercial Operation Date of the first Generating Facility commissioned pursuant to the PPA and expiring ten (10) years after the Actual Commercial Operation Date of the last Generating Facility commissioned pursuant to the PPA.

**True-up Period** means each successive five (5) year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the method for reconciling expected kWh during a typical weather year with the actual meteorological conditions measured on-site, as described in Section 3.01.

**Weather File** means the following typical meteorological year data set, which contains average hourly values of measured solar radiation, temperature, and wind speed: Meteonorm 20-year data set, San Jose, CA.

**ARTICLE II. PERFORMANCE GUARANTEE PRICE.**

In consideration of Provider entering into this Agreement, Customer shall pay to Provider on the Actual Commercial Operation Date, for each Generating Facility commissioned pursuant to the PPA, the sum of $1.

**ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the Generating Facility during any Guarantee Year, subject to the limitations, terms and conditions stated in this Agreement, shall be not less than the product of the Guaranteed Level and the Expected Energy, as adjusted for measured metrological conditions in Section 3.01.

**Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit and Annual Surplus for each Guarantee Year during the Term:

\[
\text{Annual Deficit} = (\text{Expected Energy} \times \text{Guaranteed Level}) \times \text{Weather Adjustment} - \text{Actual Generation}
\]

Where "Weather Adjustment" means the following ratio:

\[
\frac{\text{Simulated Energy in a Measured Meteorological Year (SEMMY)}}{\text{Simulated Energy for a Typical Meteorological Year (SETMY)}}
\]
For each Guarantee Year, Provider shall calculate the Annual Deficit.

Section 3.02 Guarantee Payment/Reimbursement.

(a) At the end of each True-up Period:

(i) if the $\sum$ Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (i) the Annual Deficits and (ii) the Avoided Energy Price per kWh (a "Guarantee Payment");

(ii) Provider shall, by invoice, promptly notify Customer of any Guarantee Payment due. A Guarantee Payment shall be payable within thirty (30) days of the date of such invoice.

Section 3.03 Actual Generation Measurement.

The process for measuring Actual Generation for each Guarantee Year shall be:

(a) Initial Output Data Collection. During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output provided by the DAS to calculate the Actual Generation for such Guarantee Year.

(b) Equipment Calibration and Replacement. Provider may request to have the irradiance (insolation) sensing equipment independently calibrated or replaced at its own expense every eighteen to thirty months. Provider shall notify the other party of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.

(c) Contingency for Equipment Failure. In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation shall be adjusted to compensate for such lost data:

(i) In lieu of lost irradiance/insolation data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.

(ii) In lieu of lost electricity data, Provider will utilize the cumulative data from Generating Facility meter readings to calculate the electricity generated during the missing interval. In the event that data from the Generating Facility meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIm. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Year.
This Section 3.03(c) states Provider's sole liability, and Customer's exclusive remedy, for any Guaranteed Output arising from any equipment failure or lost data relating to the DAS.

**ARTICLE IV. CUSTOMER RESPONSIBILITIES**

**Section 4.01 Designated Contacts.**

Customer hereby designates an individual as "Primary Contact" and another individual as "Secondary Contact," each of whom shall be authorized to represent Customer in the administration of this Agreement:

**Primary Contact:**
- Name: Tom Fitzwater
- Work Phone: (408) 321-5705
- Mailing address: Santa Clara Valley Transportation Authority  3331 North First Street  
  San Jose, CA  95134
- Email: tom.fitzwater@vta.org

**Secondary Contact:**
- Name: Evelynn N. Tran
- Work Phone: (408) 321-7565
- Mailing address: Santa Clara Valley Transportation Authority  3331 North First Street  
  Building C, Second Floor  
  San Jose, CA  95134
- Fax: (408) 321-7547
- Email: evelynn.tran@vta.org

**Section 4.02 Customer Responsibilities.**

Throughout the Term, and as conditions to the obligations of Provider hereunder, Customer shall:

(a) not be in breach of any Customer obligations under the PPA;

(b) grant reasonable access to the Generating Facility by Provider personnel and representatives and the operations and maintenance provider engaged by Provider;

(c) insure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications, and

(d) not modify, alter, damage, service, or repair, without Provider's prior written approval, any part of the Generating Facility, the supporting structure for the Generating Facility (including building roof, if applicable), or the associated wiring.
Section 4.03  Customer’s Failure to Uphold Responsibilities.

Provider’s duties under Article III shall be suspended for the duration of Customer’s failure to satisfy one or more of Customer’s Responsibilities set forth in Section 4.02 (“Customer’s Responsibilities”). Provider shall promptly notify Customer of any such failures (“Out of Compliance Letter”). Upon Customer’s cure of all failures described in an Out of Compliance Letter, Provider will notify Customer (“In Compliance Letter”) that Customer is complying with Customer’s Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a “Noncompliance Period”), Provider shall have no liability under this Agreement. Each month in which there is a Noncompliance Period and any Actual Generation in such month(s) shall be disregarded in the calculation of Monthly Deficits or Monthly Surpluses under Section 3.01 and the Expected kWh for any Guarantee Year in which there is a Noncompliance Period shall be reduced by an amount proportionate to the months so disregarded and to the actual or reasonably estimated insolation during such months.

ARTICLE V. EXPECTED ENERGY ADJUSTMENT

Section 5.01  Adjustment of Expected Energy.

If, and to the extent, any of the following events results in a material change in the production of electricity by the Generating Facility, Expected Energy shall be adjusted correlative for the period of such material change:

(a) There is an event of Force Majeure; or

(b) There is any change in usage of or structures on any of the Sites, or buildings at or near any of the Sites, without the prior written approval of Provider.

Section 5.02  Notification of Changes to Expected Energy.

If Provider determines that any changes to Expected Energy are required based on an event or events described in Section 5.01, then Provider shall notify the Customer in writing of the basis for its determination and Provider shall either provide revised definitions of Expected Energy in exhibits that shall replace the current exhibits to this Agreement, or specify a date by which it shall do so.

ARTICLE VI. MISCELLANEOUS PROVISIONS.

Section 6.01  Limitation of Liability.

Neither Party shall be liable under this Agreement for any indirect, consequential or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of use of any equipment or facilities. In no
event shall Provider’s liability hereunder exceed any payment obligations arising under Section 3.02.

Section 6.02  **Technical Disputes.**

In case of any technical dispute between the Parties in a matter related to the calculation of the Actual Generation, Monthly Deficit, or Monthly Surplus, the Customer shall have the right to request the appointment of a technical expert (the Expert) for the solution of the issue amongst the following experts: Sandia, BEW Engineering, SGS, or TUV. The Expert shall finally determine the technical matter at issue in accordance with the provisions of this Contract, acting as arbitrator. The Expert shall deliver its determination to the Parties in writing, including an explanation of the underlying reasons, within thirty (30) calendar days after the acceptance of the mandate. The Expert’s determination shall be final and binding upon the Parties. The costs of the determination, including fees and expenses of the Expert, shall be borne by the Party the Expert deems is in the wrong.

Section 6.03  **Notices.**

All notices or other communications given, delivered or made under this Agreement by either party to the other party shall be in writing and shall be delivered personally, by first-class mail, by reputable overnight delivery company, or by facsimile (with reasonable proof of successful transmission). All such notices or communications to a party shall be mailed, delivered or faxed to such party at its address shown below or to such other address as the party may designate by ten (10) days’ prior notice:

If to Customer:

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134
Telephone No: (408) 321-5705
Attention: Tom Fitzwater

If to Provider:

Solar Star California XXI, LLC
1414 Harbour Way South
Richmond, California 94804 USA
Telephone No.: (510) 260-8218
Facsimile No: (510) 540-0552
Attention: Steve Hanawalt

Section 6.04  **Entire Agreement.**

This Agreement and referenced Exhibits or other attachments hereto, the PPA and the Leases between Provider and Customer constitute the entire
agreement regarding the subject matter of this Agreement and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

Section 6.05 Amendments.

This Agreement may not be amended, supplemented or otherwise modified except by a written instrument specifically referring to this Agreement and signed by both parties, or as specifically allowed under the terms and conditions outlined in this Agreement.

Section 6.06 No Waiver.

Failure or delay by a party to exercise any right or remedy under this Agreement shall not constitute a waiver thereof. A waiver of breach or default shall not operate as a waiver of any other breach or default, a waiver of the provision itself, or of the same type of breach or default on a future occasion. No waiver shall be effective unless explicitly set forth in writing and executed by the party making the waiver.

Section 6.07 Successors and Assigns.

Except as provided herein, no party may assign this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld. Either party may assign the Agreement without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the parties.

Section 6.08 Severability.

If any part of this Agreement shall be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the enforceability of any other part hereof.

Section 6.09 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 6.10 Applicable Law.

This Agreement shall be governed in all respects by the laws of the State of California, in each case without application of conflict of laws principles and without regard to the actual place or places of residence or business of the
parties or the actual place or places of negotiation, execution or delivery of this Agreement.

**Section 6.11 Interpretation.**

Each party agrees that this Agreement will be interpreted fairly to carry out its purpose and intent. Each party waives any statute or rule of construction or interpretation, which would require that any ambiguity be interpreted against any party.
IN WITNESS WHEREOF, Provider and Customer have executed this Agreement.

<table>
<thead>
<tr>
<th>PROVIDER:</th>
<th>CUSTOMER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOLAR STAR CALIFORNIA XXI, LLC, a Delaware limited liability company</td>
<td>SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California public entity</td>
</tr>
</tbody>
</table>

By: _______________________
Name: _____________________
Title: _____________________

By: _______________________
Name: _____________________
Title: _____________________
## EXHIBIT A: GENERATING FACILITIES

<table>
<thead>
<tr>
<th>Generating Facility Name</th>
<th>Generating Facility Location/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>La Avenida</td>
<td>1235 La Avenida St. Mountain View, CA</td>
</tr>
<tr>
<td>7th Street</td>
<td>2240 S. 7th Street San Jose, CA</td>
</tr>
<tr>
<td>Zanker</td>
<td>3990 Zanker Rd. San Jose, CA</td>
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</table>
## EXHIBIT B: EXPECTED ENERGY

### La Avenida

<table>
<thead>
<tr>
<th>Guarantee Year</th>
<th>Annual kWh</th>
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<tr>
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<td>1,006,273</td>
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<td>1,001,242</td>
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<td>991,255</td>
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<td>966,720</td>
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<td><strong>Total</strong></td>
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### 7th Street

<table>
<thead>
<tr>
<th>Guarantee Year</th>
<th>Annual kWh</th>
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### Zanker

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<td>1,483,779</td>
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<td>1,476,360</td>
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<td>9</td>
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<td><strong>Total</strong></td>
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**EXHIBIT C: AVOIDED ENERGY PRICE**

**La Avenida**

<table>
<thead>
<tr>
<th>Guarantee Year</th>
<th>Utility Price per kWh (A)</th>
<th>PPA Rate (B)</th>
<th>Avoided Energy Price per kWh (A – B)</th>
</tr>
</thead>
<tbody>
<tr>
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**7th Street**

<table>
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<tr>
<th>Guarantee Year</th>
<th>Utility Price per kWh (A)</th>
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<th>Avoided Energy Price per kWh (A – B)</th>
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**Zanker**

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<th>Guarantee Year</th>
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<th>Avoided Energy Price per kWh (A – B)</th>
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### EXHIBIT D: TYPICAL SOLAR INSOLATION AND AC ENERGY

#### La Avenida

<table>
<thead>
<tr>
<th>Month</th>
<th>Typical Monthly Solar Insolation (kWh/m²/day)</th>
<th>Typical Monthly AC Energy (kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan</td>
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<td>46,252</td>
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<tr>
<td>Feb</td>
<td>2.99</td>
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<td>Mar</td>
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<td>Apr</td>
<td>5.67</td>
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<td>May</td>
<td>6.70</td>
<td>116,882</td>
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<td>Jun</td>
<td>7.16</td>
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<tr>
<td>Jul</td>
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<td>6.51</td>
<td>113,408</td>
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<td>Sep</td>
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<td>Annual</td>
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</table>

#### 7th Street

<table>
<thead>
<tr>
<th>Month</th>
<th>Typical Monthly Solar Insolation (kWh/m²/day)</th>
<th>Typical Monthly AC Energy (kWh)</th>
</tr>
</thead>
<tbody>
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<td>Jan</td>
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<td>May</td>
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<td><strong>836,630</strong></td>
</tr>
<tr>
<td>Month</td>
<td>Typical Monthly Solar Insolation (kWh/m²/day)</td>
<td>Typical Monthly AC Energy (kWh)</td>
</tr>
<tr>
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FIRST AMENDMENT TO REGIONAL POWER PURCHASE AGREEMENT BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND
SOLAR STAR CALIFORNIA XXI, LLC

This First Amendment to Regional Power Purchase Agreement (this "Amendment") is entered into this 29th day of May, 2011 by and between Solar Star California XXI, LLC, a Delaware limited liability company ("Seller"), and Santa Clara Valley Transportation Authority, a California public entity created by the California State Legislature pursuant to Section 100000 of the Public Utilities Code ("Buyer" and, together with Seller, each, a "Party" and together, the "Parties").

WHEREAS, Seller and Buyer entered into that certain Regional Power Purchase Agreement (the "Agreement"), dated as of February 16, 2011; and

WHEREAS, Buyer and Seller desire to amend the Agreement in accordance with the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

2. AMENDMENTS. The Agreement is hereby amended as follows:

2.1 Section 3.7(b) is hereby amended to:

2.1.1 delete the words "ninety (90) days" in the first line and replace them with "one hundred and forty (140) days"; and

2.1.2 delete the phrase "one hundred and twenty (120) days" in the last line and replace it with "one hundred and seventy (170) days".

2.2 Section 3.7(d) is hereby amended to:

2.2.1 delete the phrase "one hundred and twenty (120) days" in the second line and replace it with "one hundred and forty (140) days".

2.3 Section 3.7(f) is hereby amended to:

2.3.1 delete the phrase "one hundred and twenty (120) days" in the second line and replace it with "one hundred and forty (140) days".

3. MISCELLANEOUS

3.1 Amendment. Except as expressly modified by this Amendment, all of the terms, conditions, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, the same are hereby expressly ratified and confirmed by the Parties and any references to the Agreement herein or in the Agreement shall mean the Agreement as amended by this Amendment.
3.2 **Severability.** If any one or more provisions of this Amendment should be ruled illegal, wholly or partly invalid or unenforceable by a Governmental Authority under Applicable Law, Buyer and Seller shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of the Agreement and this Amendment (and in the event that Buyer and Seller cannot agree then such provisions shall be severed from this Amendment) and the validity and enforceability of the remaining provisions of this Amendment and the Agreement, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

3.3 **Governing Law.** This Amendment 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.

3.4 **Execution in Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Amendment by their duly authorized representatives as of the date first written above.

**SOLAR STAR CALIFORNIA XXI, LLC**

By: ______________________
Name: Mark Devine
Title: VP and GM, NA Commercial

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

By: ______________________
Name: Michael T. Burns
Title: General Manager

Approved as to form:

[Signature]
VTA Counsel
SECOND AMENDMENT TO REGIONAL POWER PURCHASE AGREEMENT
BETWEEN SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND
SOLAR STAR CALIFORNIA XXI, LLC

This Second Amendment to Regional Power Purchase Agreement (this “Amendment”) is entered into this 60th day of June, 2011 by and between Solar Star California XXI, LLC, a Delaware limited liability company (“Seller”), and Santa Clara Valley Transportation Authority, a California public entity created by the California State Legislature pursuant to Section 100000 of the Public Utilities Code (“Buyer” and, together with Seller, each, a “Party” and together, the “Parties”).

WHEREAS, Seller and Buyer entered into that certain Regional Power Purchase Agreement, dated as of February 16, 2011, as amended by that certain First Amendment to Regional Power Purchase Agreement dated as of May 25, 2011 (the “Agreement”); and

WHEREAS, Buyer and Seller desire to amend the Agreement in accordance with the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

2. AMENDMENTS.

2.1 Section 10.2(a)(ii) of the Agreement is hereby amended to delete the words “sixty (60) days after receipt of notice” in the second line and replace them with “ten (10) days after receipt of written notice”.

2.2 Section 5.1(a) of the Agreement is hereby amended to add the following sentence to the end of the section: “Unless Buyer provides written notice otherwise, invoices shall be addressed to the Santa Clara Valley Transportation Authority, Attn: Accounts Payable, 3331 North First Street, Building A, San Jose, CA 95134.”

3. MISCELLANEOUS

3.1 Amendment. Except as expressly modified by this Amendment, all of the terms, conditions, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, the same are hereby expressly ratified and confirmed by the Parties and any references to the Agreement herein or in the Agreement shall mean the Agreement as amended by this Amendment.

3.2 Severability. If any one or more provisions of this Amendment should be ruled illegal, wholly or partly invalid or unenforceable by a Governmental Authority under Applicable Law, Buyer and Seller shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of the Agreement and this Amendment (and in the event that Buyer and Seller cannot agree then such provisions shall be severed from this Amendment) and the validity and enforceability of the remaining provisions of this Amendment and
the Agreement, or portions or applications thereof, shall not be affected by such
adjustment and shall remain in full force and effect.

3.3 **Governing Law.** This Amendment 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.

3.4 **Execution in Counterparts.** This Amendment may be executed in counterparts,
each of which shall be deemed an original, but all of which shall constitute one and
the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Amendment by their duly authorized
representatives as of the date first written above.

**SOLAR STAR CALIFORNIA XXI, LLC**

By:  
Name:  
Title:  

**SANTA CLARA VALLEY**

**TRANSPORTATION AUTHORITY**

By:  
Name:  
Title:  

Approved as to form:

By:  
VTA Counsel

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