

SAN BERNARDINO WELLS SOLAR PROJECT

AMENDED AND RESTATED POWER PURCHASE AGREEMENT

BETWEEN

SOLAR STAR CALIFORNIA XXXIX, LLC

AND

CITY OF RIVERSIDE

DATED FOR CONVENIENCE AS OF _____, 2017

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POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this “**Agreement**”), which is dated for convenience as of this ____ day of _____, 2017, is being entered into by and between the CITY OF RIVERSIDE a California charter city and municipal corporation organized under the laws of the State of California hereinafter designated as “City” or “**Buyer**”, and SOLAR STAR CALIFORNIA XXXIX, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in California, hereinafter designated “**Seller**”. Each of Buyer and Seller is referred to individually in this Agreement as a “**Party**” and together they are referred to as the “**Parties**”.

RECITALS

WHEREAS, Seller responded on September 22, 2014 to the request for proposals and following negotiation Seller has agreed to develop, construct, and operate up to a cumulative 5.5 MWac solar photovoltaic generation system located on multiple Buyer owned sites located in the County of San Bernardino and sell to Buyer, and Buyer has agreed to purchase, certain renewable energy, capacity and associated environmental attributes; and

WHEREAS, on or about April 30, 2015, the Parties entered into a Power Purchase Agreement, but Seller was unable to commence construction of the 5.5 MWac solar photovoltaic generation system due to unforeseen circumstances and the Parties now wish to amend and restate the April 30, 2015 Power Purchase Agreement, setting forth the terms and conditions pursuant to which such sales and purchases shall be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

“**AC**” means alternating current.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person or is a director or officer of such Person or of any such other Person. A Person shall be deemed to be “controlled by” another Person if such other Person holds or beneficially owns, directly or indirectly, fifty percent (50%) or more of the equity interests in the Person specified, or fifty percent (50%) or more of any class of voting securities of the Person specified.

“**Agreement**” has the meaning set forth in the preamble of this Agreement.

“Agreement Term” has the meaning set forth in Section 2.2.

“Ancillary Documents” means all agreements and other documents included in the Performance Security, and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of Buyer pursuant to or in connection with any thereof or this Agreement.

“Annual Contract Quantity” means, for the Stub Period and each Contract Year, the number of MWh set forth on Appendix K.

“ASME” means American Society of Mechanical Engineers.

“Assumed Daily Deliveries” has the meaning set forth in Section 13.3(c).

“Assurances” has the meaning set forth in Section 5.1(a).

“ASTM” means American Society for Testing and Materials.

“Authorized Auditors” means representatives of Buyer or Buyer’s Authorized Representatives who are authorized to conduct audits on behalf of Buyer.

“Authorized Representative” means, with respect to each Party, the Person designated as such Party’s authorized representative pursuant to Section 14.1.

“AWS” means American Welding Society.

“Bankruptcy” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for sixty (60) days.

“Bankruptcy Code” has the meaning set forth in Section 12.3.

“Brown Act” has the meaning set forth in Section 14.21(d).

“Business Day” means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California or New York, New York.

“Buyer” has the meaning set forth in the preamble of this Agreement.

“Buyer-Issued Curtailment Order” means an order, directive, alert, request, or notice from Buyer that is issued, during the Delivery Term, to Seller, for any reason that requires the curtailment or reduction, in whole or in part, of the Facility Energy. For the avoidance of doubt, Buyer-Issued Curtailment Order does not include Curtailment Order.

“Cal-OSHA” means California Occupational Safety & Health Administration.

“CAMD” means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“Capacity Rights” means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority associated with the electric generating capability of the Facility, including the right to resell such rights.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“CEC Certified” means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.

“CEC Performance Standard” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for electric generation facilities that are owned or operated (or both) by local publicly-owned electric utilities, or for which a local publicly-owned electric utility has entered into a contractual agreement, whether directly or through a joint powers agency for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“CEQA” means the California Environmental Quality Act, Public Resources Code §§ 21000, et seq., as amended from time to time, and any successor statute.

“CEQA Determinations” means that the lead agency conducting the review of the Facility as required under CEQA shall have certified the final environmental impact report, negative declaration, mitigated negative declaration or equivalent document, issued a final approval for the Facility, and filed a Notice of Determination in compliance with CEQA.

“Certification Deadline” has the meaning set forth in Section 2.4(h).

“Change in Law” means a change in any federal, state, local or other law (including any environmental laws, RPS Law or EPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permitting conditions, certification conditions, authorization, approval of a Governmental Authority or WREGIS, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval, which is binding on a Party, the Parties, or the Facility.

“Commercial Operation” means Seller has demonstrated to the reasonable satisfaction of Buyer that all of the items set forth in Appendix N have been met and the certificate associated therewith has been accepted by Buyer.

“Commercial Operation Date” means the date on which Commercial Operation occurs, as determined pursuant to Section 3.5.

“Compliance Costs” has the meaning set forth in Section 8.6.

“Confidential Information” has the meaning set forth in Section 14.21(a).

“Contract Capacity” means the installed capacity of the Facility, which is expected to be at 4.44MW (ac) but will not be less than 4.25 MW (ac), net of all auxiliary loads, station electrical uses, and electrical losses before the Point of Interconnection, and which represents the maximum amount of Delivered Energy in any one hour that the Buyer is obligated to purchase under this Agreement. The final Contract Capacity shall be determined on or prior to December 19, 2016 asset forth in Appendix I.

“Contract Price” means, for any period of time, the applicable contract price for the Energy set forth in Appendix A.

“Contract Year” means (i) the twelve (12) month period beginning on January 1 of the calendar year immediately following the Commercial Operation Date of the RES-BCT Sites, and (ii) each succeeding period of twelve (12) consecutive months following the initial Contract Year described in the preceding clause (i); *provided* that the Stub Period shall not be part of a Contract Year.

“CPRA” has the meaning set forth in Section 14.21(d).

“Curtailement Order” means an order, directive, alert, request, or notice from CAISO, the Transmission Provider, or a reliability entity with authority over the Facility (including WECC) that is issued, during the Delivery Term, to Seller or to Buyer, that requires the curtailment or reduction, in whole or in part, of the Facility Energy due to (a) a System Emergency, (b) any warning of an anticipated System Emergency, or any warning of an imminent condition or situation that jeopardizes the integrity of the electrical system of the entity issuing the Curtailment Order, (c) an event of Force Majeure at or downstream from the Point of Interconnection, or (d) or for any other circumstance under which the entity issuing the Curtailment is authorized by applicable law to do so.

“Curtailement Period” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of a Curtailment Order or a Buyer-Issued Curtailment Order.

“Daily Delay Damages” has the meaning set forth in Section 3.6.

“Deemed Generated Energy” means the quantity of Facility Energy, expressed in MWh, that would have been produced by the Facility and delivered to the Point of Interconnection during a particular month but for curtailment of the Facility according to a Buyer-Issued Curtailment Order, which shall be calculated using the procedures developed under Section 7.3(d).

“Default” has the meaning set forth in Section 13.1.

“Defaulting Party” has the meaning set forth in Section 13.1.

“Delivered Energy” means the Energy delivered by Seller, including Facility Energy delivered to the Point of Interconnection.

“Delivery Term” has the meaning set forth in Section 2.2(b).

“Delivery Term Security” has the meaning set forth in Section 5.9(b).

“Dispute” has the meaning set forth in Section 14.3.

“Dispute Notice” has the meaning set forth in Section 14.3.

“Downgrade Event” shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or Qualified Guarantor, as applicable, or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person.

“Early Termination Date” has the meaning set forth in Section 13.3(a).

“EEI” means Edison Electric Institute.

“Effective Date” has the meaning set forth in Section 2.1.

“Electric Metering Devices” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Energy” means electrical energy measured as AC.

“Environmental Attributes” means Renewable Energy Credits, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (B) that are attributable to (i) generation of Facility Energy during the Agreement Term, and (ii) the emissions or other environmental characteristics of such Facility Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “**UNFCCC**”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that Act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by

the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Facility Energy, including any investment or production tax credit expected to be available to Seller, or any owner or lessee of the Facility, with respect to the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility, and (c) cash grants or other financial incentives from any local, state or federal government available to Seller, or any owner or lessee of the Facility, with respect to the Facility.

“Environmental Attribute Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person under Section 1605(b) of the Energy Policy Act of 1992, or any successor statute or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“EPA” means the Environmental Protection Agency and any successor agency.

“EPS Compliant” when used with respect to the Facility or any other facility at any time, means that the facility satisfies both the PUC Performance Standard and the CEC Performance Standard (in each case, to the extent applicable) in effect at the time; *provided*, if it is impossible for the facility to satisfy the applicable requirements of both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the facility shall be deemed EPS Compliant if it satisfies both the applicable requirements of the CEC Performance Standard in effect at the time, and those portions of the applicable requirements of the PUC Performance Standard in effect at the time that it is possible for the facility to satisfy while at the same time satisfying the applicable requirements of the CEC Performance Standard in effect at the time.

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code as amended from time to time or any successor statute.

“Excess Energy” means, in any Contract Year, the portion of any Delivered Energy plus Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.3(e) delivered in excess of one hundred ten percent (110%) of the Annual Contract Quantity for such Contract Year, for which Seller shall be paid the Contract Price set forth in Section 3 of Appendix A. The delivery by Seller of the portion of Excess Energy consisting of Delivered Energy shall include delivery of any associated Environmental Attributes.

“Facility” means the cumulative photovoltaic solar-powered electric generating facility, including related interconnection facilities up to the Point of Interconnection.

“Facility Energy” means the Energy generated by the Facility, including Deemed Generated Energy, less station load and transmission losses, delivered to the Point of Interconnection, as measured by a WREGIS-approved Electric Metering Devices.

“Facility Lender” means any lender or investor providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with

the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” has the meaning set forth in Section 14.6(b).

“Force Majeure Notice” has the meaning set forth in Section 14.6(a).

“Forced Outage” means Seller’s removal of service availability of the Facility, or any portion of the Facility, for emergency reasons, or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure, but excluding Seller’s removal of the service availability of the Facility pursuant to a Buyer-Issued Curtailment Order or a Curtailment Order.

“GAAP” means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“GEP Shortfall” has the meaning set forth in Section 9.1.

“GEP Shortfall Liquidated Damages” has the meaning set forth in Section 9.2(a).

“GEP Shortfall Makeup Period” has the meaning set forth in Section 9.1.

“Governmental Authority” means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term “Governmental Authority” shall not include Buyer.

“Guaranteed Commercial Operation Date” or **“Guaranteed COD”** means November 7, 2017 for a NEMA site as specified in Appendix J and December 31, 2017 for a RES-BCT site as specified in appendix J, as the same may be extended pursuant to the terms of this Agreement, or an earlier date.

“Guaranteed Energy Production” means, for a Contract Year or Stub Period, eighty-five percent (85%) of the Annual Contract Quantity for such Contract Year or Stub Period. For purposes of determining the Guaranteed Energy Production, the Annual Contract Quantity shall be reduced by the Seller Excused Energy Amount during such period.

“Hazardous Material” has the meaning ascribed to that term in Section 14.19(d).

“IEEE” means the Institute of Electrical and Electronics Engineers.

“Initial Development Milestones” has the meaning set forth in Section 2.1.

“Insurance” means the policies of insurance as set forth in Appendix F.

“Interest Rate” has the meaning set forth in Section 11.3.

“ISA” means Instrument Society of America.

“Lien” means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including an option, of any other Person in or with respect to any real or personal property.

“Major Maintenance Blockout” has the meaning set forth in Section 4.4.

“Market Replacement Cost” has the meaning set forth in Section 9.2(a).

“Milestone” has the meaning set forth in Section 3.6.

“Milestone Date” means the deadline associated with each Milestone as set forth in Section 2.1, as applicable.

“MW” means megawatt (AC).

“MWh” means megawatt-hour (AC).

“NEMA” or **“Net Energy Metering Aggregation”** means a special billing arrangement that allows a customer with multiple meters on the same property or adjacent or contiguous property to receive financial credit for renewable generation produced and net the credit against the load behind all eligible meters.

“NEMA Daily Delay Damages” has the meaning set forth in Section 3.6.

“NEMA Guaranteed Commercial Operation Date” means November 7, 2017, which date may be extended per Section 3.6 (c).

“NEMA Outside Commercial Operation Date” means January 7, 2018, which date shall not be subject to extension of any kind.

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning set forth in Section 13.3(a).

“Notifying Party” has the meaning set forth in Section 14.3.

“OSHA” means Occupational Safety & Health Administration.

“Outside Commercial Operation Date” or **“Outside COD”** means January 7, 2017 for a NEMA site as specified in Appendix J and March 26, 2018 for a RES-BCT site as specified in appendix J, which dates shall not be subject to extension of any kind.

“Pacific Prevailing Time” means the local time in Los Angeles, California.

“Party” or **“Parties”** has the meaning set forth in the preamble of this Agreement.

“Performance Security” means the Project Development Security and the Delivery Term Security, together or individually, each of which is required to be provided by Seller to Buyer to secure Seller’s performance under this Agreement.

“Permits” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the CEQA Determinations and the Permits described in Appendix M.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, government or other political subdivision, or other entity.

“Point of Interconnection” has the meaning set forth in Appendix J.

“Pre-Certification Period” means the period of time between the Commercial Operation Date and the date the Facility becomes CEC Certified.

“Present Value Rate” means, at any date, the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

“Products” means any and all bundled Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing which are or can be produced by or are associated with the Facility, whether now attainable or established in the future, including, without limitation, delivered energy, renewable attributes, renewable energy credits, Resource Adequacy Attributes, Local Capacity Requirement Attributes and all environmental attributes. Subject to Section 8.7, the Products shall meet the standard of “portfolio content category 1” as defined by the RPS Law.

“Professional Engineer” means any Person upon which the Parties mutually agree.

“Project Development Security” has the meaning set forth in Section 5.9(a).

“Projected Bundled Retail Rate” means, for the Stub Period and each Contract Year, the average dollar value of retail energy per kWh set forth on Appendix L.

“Proposed Sale Notice” has the meaning set forth in Section 14.23.

“Prudent Utility Practices” means those practices, methods, and acts, that are commonly used by a significant portion of the electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, or WECC, each as may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry.

“Public Utilities Code” means the Public Utilities Code of the State of California, as may be amended from time to time.

“PUC” means the California Public Utilities Commission and any successor thereto.

“PUC Performance Standard” means, at any time, the greenhouse gas emission performance standard in effect at such time for electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

“Qualified Guarantor” means a guarantor with a rating of at least (a) BBB by Fitch’s; (b) BBB- by S&P; or (c) Baa3 by Moody’s Investors Services, Inc., unless agreed otherwise by the Parties.

“Qualified Issuer” means a Person that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s Investors Service, Inc.; or (2) “A” or higher by Standard & Poor’s.

“Quality Assurance Program” has the meaning set forth in Section 5.7.

“Recipient Party” has the meaning set forth in Section 14.3.

“Remaining Term” means, at any date, the remaining portion of the Agreement Term at that date without regard to any early termination of this Agreement.

“Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an RPS Compliant eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy

resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the Renewable Energy Credit can prove that it has purchased renewable Energy.

“Requirements” means, collectively, any applicable standards, Prudent Utility Practices, all applicable Requirements of Law, Seller’s Quality Assurance Program, the Milestones and all other requirements of this Agreement.

“Requirement of Law” means federal, state, local, or, as applicable, tribal laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“RES-BCT” or **“Renewable Energy Self-Generation Bill Credit Transfer”** means a special billing arrangement which allows local governments to generate electricity at one account and transfer any available excess bill credits (in dollars) to another account owned by the same local government.

“RES-BCT Daily Delay Damages” has the meaning set forth in Section 3.6.

“RES-BCT Guaranteed Commercial Operation Date” means December 31, 2017, which date may be extended per Section 3.6 (c).

“RES-BCT Outside Commercial Operation Date” means March 26, 2018, which date shall not be subject to extension of any kind.

“Right of Buyout Option” and **“Buyout Option”** have the meaning set forth in Section 14.23.

“RPS Compliant” means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource under the RPS Law and meet the requirements of Public Utilities Code Section 399.16(b)(1), as amended from time to time and any successor statute.

“RPS Law” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code §25740 through §25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC, and as all of the foregoing may be promulgated, implemented, or amended from time to time, and any successor laws or regulations.

“Scheduled Outage” means any Seller initiated outage with respect to the Facility other than a Forced Outage.

“Scheduled Outage Projection” has the meaning set forth in Section 4.4.

“Seller” has the meaning set forth in the preamble of this Agreement.

“Seller Excused Energy Amount” means, for the Stub Period and each Contract Year, an amount expressed in MWh, equal to the aggregate amount of reduction in Facility Energy “deemed” to have been generated during such Contract Year or Stub Period as a result of Force Majeure events that prevent Seller from generating or delivering Facility Energy to the Point of Interconnection, curtailment of the Facility by Buyer pursuant to a Buyer-Issued Curtailment Order, curtailment of the Facility pursuant to a Curtailment Order, or site settlement (whether caused by Buyer or natural settlement). No less frequently than quarterly during the Stub Year and each Contract Year, Seller shall calculate and provide notice to Buyer of the then-cumulative Seller Excused Energy Amount for such Contract Year or Stub Period, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, output projections and other relevant data. The calculation shall be subject to review and approval by Buyer, such approval not to be unreasonably withheld, delayed or conditioned.

“Site” means the real properties defined in Appendix J.

“Site Control” means the Site Use Conditions with respect to the Site which permit Seller to perform its obligations under this Agreement and the Ancillary Documents.

“Site License” the license to access the Site granted to Seller by Buyer that is described in Section 12.1(f) and Appendix O.

“Site Use Conditions” mean terms and conditions specified in Appendix O under which Seller is permitted to use the Site to perform its obligations under this Agreement.

“SPE Failure Notice” has the meaning set forth in Section 12.3.

“SPE Opinion” has the meaning set forth in Section 12.3.

“SPE Remedial Action Plan” has the meaning set forth in Section 12.3.

“Special Purpose Entity” means a limited liability company which at all times on and after the date hereof:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) after the Commercial Operation Date, acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) after the Commercial Operation Date, transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction;

(b) was, is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility.

(d) will not, after the Commercial Operation Date, have any assets other than those related to the Facility;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(f) will, after the Commercial Operation Date, maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person and has filed and will file its own tax returns (except to the extent treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Seller and not as a division, department or part of any other Person;

(h) has not made and will not make any gifts or fraudulent conveyances to any Person, and will not, after the Commercial Operation Date, make any loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(i) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business, and, after the Commercial Operation Date, on terms that are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm’s-length transaction with an unrelated third party;

(j) will not indemnify any Persons other than natural persons in their representative capacity acting on behalf of Seller under circumstances not prohibited by applicable law;

(k) other than guarantees or performance security related to the Facility, any of its assets, or the financing of the Facility, will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(l) has complied and will comply with all of the terms and provisions contained in its organizational documents and has done or caused to be done and will do all things necessary to preserve its existence;

(m) will not, after the Commercial Operation Date, commingle its funds or assets with those of any Person and will not participate in any cash management system with any other Person;

(m) will, after the Commercial Operation Date, hold its assets and conduct all business in its own name;

(o) will, after the Commercial Operation Date, maintain its financial statements, accounting records and other entity documents separate from any other Person and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP;

(p) has observed and will observe all limited liability company formalities;

(n) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(o) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(s) will, after the Commercial Operation Date, fairly and reasonably identify any allocation of overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(p) other than in connection with the Facility or the financing thereof, has not pledged and will not pledge its assets for the benefit of any other Person;

(q) has had, now has, and will have articles of organization, a certificate of formation and/or an operating agreement, as applicable, that provides that it will not without the affirmative vote of a majority of its members: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(r) after the Commercial Operation Date, intends to remain solvent, to continue to pay its debts and liabilities (including, as applicable, shared personnel, overhead expenses and salaries of employees) from its assets as the same shall become due, and to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(s) will have no indebtedness, loans or advances other than (i) the loan made by a Facility Lender providing construction financing for the Facility and any loan in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities (including intercompany loans from Affiliates) incurred in the ordinary course of business relating to its development, construction, ownership, leasing and operation of the Facility and its routine administration, the amounts of which are normal and reasonable under the circumstances, and (iv) such other liabilities that are permitted pursuant to this Agreement.

“Stub Period” means the period between the Commercial Operation Date of the NEMA sites and the end of the calendar year, i.e., December 31, of the year during which the Commercial Operation Date of the RES-BCT sites is achieved.

“Successor Entity” has the meaning set forth in Section 13.1(i).

“System Emergency” has the meaning set forth in the CAISO Tariff.

“Tax” or **“Taxes”** means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax, and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

“Temporary Construction Easements” means easements needed during construction that lie outside the footprint of Sites as described in Appendix J and Appendix O.

“Termination Notice” has the meaning set forth in Section 13.3(a).

“Termination Value” means in an amount calculated according to Section 13.3; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“Test Energy” shall mean any Facility Energy that is delivered prior to the Facility being CEC Certified,

“Transmission Providers” means the Persons operating the Transmission Systems providing Transmission Services to or from the Point of Interconnection.

“Transmission Services” means the transmission and other services required to transmit Facility Energy to or from the Point of Interconnection.

“Transmission System” means the facilities utilized to provide Transmission Services.

“Unexcused Cause” has the meaning set forth in Section 14.6(b).

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means Western Renewable Energy Generation Information System.

“WREGIS Certificates” has the meaning set forth in Section 8.4.

“WREGIS Operating Rules” means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) time is of the essence;
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person's successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, instrument, tariff or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term, regardless of whether words such as "without limitation" are expressly included in the applicable provision;
- (i) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including";
- (j) references to time shall always refer to Pacific Prevailing Time; and reference to any "day" or "month" shall mean a calendar day or calendar month, as applicable, unless otherwise indicated;
- (k) the term "or" is not exclusive; and
- (l) the terms "shall" and "will" shall have the same meaning and be of equal force and effect.

ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement shall become effective as of the date that both Parties have executed and delivered this Agreement and the Ancillary Documents (other than those Ancillary Documents which, per the terms of this Agreement, are not required to be executed until a later date) (collectively, the “*Effective Date*”). If requested, either Party shall jointly execute a certificate that confirms the occurrence of the Effective Date and ratifies the existence and effectiveness of this Agreement. In the event that each of the obligations of Seller in subsection (a) and (b) of this Section 2.1 (“*Initial Development Milestone*”) has not been met on or prior to the Milestone Date associated with such Initial Development Milestone as set forth below, then Buyer may terminate this Agreement according to Section 2.4(c). Seller shall deliver to Buyer:

- (a) on or prior to ten (10) calendar days following the Effective Date:
 - (i) the Project Development Security;
 - (ii) a detailed schedule outlining the approaches and expected timing to obtain all the required Permits for constructing and operating the project;
- (b) on or prior to thirty (30) calendar days following the Effective Date:
 - (i) a copy of the CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC;

Section 2.2 Agreement Term and Delivery Term.

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and shall end on the last day of the Delivery Term or upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date of the NEMA sites and consisting of the Stub Period plus twenty-five (25) consecutive Contract Years thereafter.

Section 2.3 Survivability. The provisions of this Article II, Article XII, Article XIII, and Article XIV shall survive for a period of one year following the termination of this Agreement (to the extent applicable). The provisions of Article XI shall (to the extent applicable) survive for a period of four (4) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries related to the period prior to termination of this Agreement.

Section 2.4 Early Termination.

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Failure to Timely Meet the Initial Development Milestones.** Buyer may terminate this Agreement if Seller fails to meet the Initial Development Milestones described in Section 2.1(a) within ten (10) calendar days after the Effective Date or if Seller fails to meet the Initial Development Milestones described in Section 2.1(b) within twenty (30) calendar days after the Effective Date.

(d) **Early Termination for Failure to Provide Final Annual Contract Quantity.** Buyer may terminate this Agreement if Seller fails to complete final design of the Facility and fails to provide the final Contract Capacity and Annual Contract Quantity in Appendix K on or prior to December 19, 2016 as described in Section 3.3.

(e) **Amendment for Failure to Achieve Commercial Operation for the NEMA Sites Before the NEMA Outside Commercial Date.** Buyer, in its sole discretion, may unilaterally amend this Agreement to remove from the Agreement a NEMA Site or Sites, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation for such Site or Sites on or before the NEMA Outside Commercial Operation Date. So amending this Agreement pursuant to this Section with respect to any Site or Sites will not modify this Agreement with respect to any remaining Site or Sites.

(f) **Amendment for Failure to Achieve Commercial Operation for the RES-BCT Sites Before the RES-BCT Outside Commercial Date.** Buyer, in its sole discretion, may unilaterally amend this Agreement to remove from the Agreement a RES-BCT Site, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation for such Site or Sites on or before the RES-BCT Outside Commercial Operation Date. So amending this Agreement pursuant to this Section with respect to any Site or Sites will not modify this Agreement with respect to any remaining Site or Sites.

(g) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6.

(h) **Early Termination for Failure to Obtain CEC Certification.** Buyer may terminate this Agreement according to Section 13.3, effective upon notice to Seller pursuant to Section 13.1(b), if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date, which date may be extended (i) due to a Change in Law (in which case, the provisions of Section 8.7 shall apply), or (ii) if Seller can demonstrate to Buyer's reasonable satisfaction that the failure to obtain CEC Certification is not due to any act or omission by Seller, then such additional period of time as the Parties may agree is required to obtain such CEC Certification (the "**Certification Deadline**").

(i) **Early Termination for Exercise of Buyout Option.** If Buyer exercises the Buyout Option pursuant to Section 14.23, this Agreement shall terminate effective upon the consummation of any sale of the Facility to Buyer.

Any termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

Section 2.5 Effect of Early Termination.

If this Agreement is terminated according to Section 2.4(a), Section 2.4(c), Section 2.4(d), Section 2.4(e), Section 2.4(h), Section 2.4(i), or Section 9.3, such termination will be “no fault”; and, neither Party will have any liability arising out of such termination. However, notwithstanding the foregoing, each Party must discharge its payment obligations for any undisputed amounts owed to the other Party under this Agreement, including any existing GEP Shortfall amounts, Daily Delay Damages, or other undisputed payment amounts incurred before termination. Buyer must return to Seller the Performance Security, less any amounts drawn by Buyer according to this Agreement. Following such termination, and according to the Site License, Seller must remove all of its tangible property comprising the Facility and restore the Site to its original condition by a mutually-convenient date that is not later than ninety (90) calendar days after the effective date of such termination; however, if Seller determines that the removal of its property and the restoration of the Site cannot reasonably be accomplished within ninety (90) calendar days after the effective date of termination, Seller may request additional time, subject to Buyer’s reasonable approval.

**ARTICLE III
DEVELOPMENT OF THE FACILITY**

Section 3.1 CEQA Completion. The Parties agree that Buyer’s development of Sites as photovoltaic generation projects, including execution of this Agreement as Buyer, is a “project” as defined by CEQA. As the project proponent and the first agency to act upon the project, Buyer is the lead agency. Under the City’s guidance, Seller, at its sole expense, shall compensate Buyer for all CEQA related mitigation costs and prepare a CEQA Final Initial Study & Mitigated Negative Declaration (IS/MND), and provide that to the City for its review and approval.

Section 3.2 Interconnection Completion. During the Term, Seller, at its sole expense, will be responsible for interconnecting the photovoltaic system at each Site to the local electric grid (including any fees, deposits, maintenance, or removal associated therewith); and payment of the initial interconnection costs imposed by the local utility (Southern California Edison Company) under the applicable interconnection agreements. Buyer will be responsible for complying with any interconnection agreement to which it is a party, as well as for maintaining any equipment or facilities owned by Buyer. Any monthly charges, maintenance, or removal costs under the applicable interconnection agreements with the local utility shall be the responsibility of the owner of the Facility. To the extent Buyer pays such costs to the local utility under the applicable interconnection agreements, Seller shall reimburse Buyer for such costs paid by Buyer as they are incurred.

Section 3.3 Project Design. Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate. Buyer will review and approve Seller's final design of the Facility, with such approval not being unreasonably withheld, delayed, or conditioned, and will confirm that the installed capacity for the Facility contained within the final design satisfies the Contract Capacity requirements of this Agreement. The final design of the Facility shall be completed by no later than the date set forth in Appendix I..

Section 3.4 Site Confirmation. Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and become familiar with the Site and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, and air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer. The foregoing shall not restrict Seller's right to claim Force Majeure hereunder to the extent the requirements therefor are satisfied and will not subject Seller to liability for damages related to Hazardous Materials, except to the extent such damages are caused by Hazardous Materials introduced to the Site by Seller.

Section 3.5 Certification of Commercial Operation Date. Seller shall provide Buyer with notice when Seller believes that all conditions precedent to achieving Commercial Operation of the entire Facility as specified in the definition of "**Commercial Operation**" in Section 1.1 have been satisfied. Buyer may either accept or reject the notice, *provided* that Buyer may not unreasonably withhold, delay or condition acceptance of such notice, and any rejection by Buyer must be reasonable and contain a written description with reasonable detail of Buyer's reasons therefor. Buyer shall in all cases respond to any such notice within ten (10) Business Days and shall be deemed to have accepted such notice if it fails to respond within such timeframe. If Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to relate back to the date of any Seller notice of Commercial Operation of the entire Facility that is accepted (or deemed accepted) by Buyer. The Milestone Date for the Commercial Operation Date shall be extended automatically during the period starting five (5) Business Days following the date of Seller's delivery of any notice of the Commercial Operation Date under this Section 3.5 until the date on which Buyer responds to such notice under this Section 3.5. Any delay liquidated damages otherwise payable under Section 3.6 shall be excused for each day following the date of Seller's delivery of notice of the Commercial Operation Date under this Section 3.5 until the date on which Buyer responds to such notice under this Section 3.5.

Section 3.6 Milestone Schedule.

(a) Attached as Appendix I is a schedule of the milestones for the development of the Facility through the Commercial Operation Date (each a “**Milestone**”) and the Milestone Dates associated therewith. Failure to achieve any Milestone by the Milestone Date specified in Appendix I shall result in the payment, from Seller to Buyer, of the associated daily liquidated damages (“**Daily Delay Damages**”) as specified in Appendix I. For the avoidance of doubt. If multiple Milestones are missed, Seller shall pay Daily Delay Damages for each Milestone.

(b) The total aggregated Daily Delay Damages may not exceed \$625,000 and will be the maximum amount owed to Buyer for Termination prior to certification of Commercial Operation.

(c) Each Milestone Date (excluding the NEMA Outside Commercial Operation Date and RES-BCT Outside Commercial Operation Date) may be extended, on a day-for-day basis if Seller is actually, demonstrably and unavoidably delayed in achieving such Milestone due to unreasonable delay by Buyer in obtaining CEQA approval, Buyer-caused delays, or, with respect to any RES-BCT Site, delays caused by the local utility (unless such delays result from the negligence or misconduct of Seller).

(d) Until the Commercial Operation Date, Seller shall provide Buyer with a monthly report, setting forth the status of each Milestone, any issues that have arisen with respect to the timely achievement of such Milestone, and any slippage in any Milestone Date.

(e) If Seller pays a NEMA Site related Daily Delay Damages under this Section 3.6, and thereafter achieves Commercial Operation for such NEMA Site or Sites on or before the NEMA Guaranteed Commercial Operation Date, then Buyer shall refund to Seller any such NEMA Site related Daily Delay Damage previously paid.

(f) If Seller pays a RES-BCT Site related Daily Delay Damages under this Section 3.6, and thereafter achieves Commercial Operation for such RES-BCT Site on or before the RES-BCT Guaranteed Commercial Operation Date, then Buyer shall refund to Seller any such RES-BCT related Daily Delay Damage previously paid.

(g) The Parties agree that the damages that Buyer would incur due to Seller’s failure to timely achieve Commercial Operation would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller’s sole liability and obligation, and Buyer’s sole right and remedy other than the ability to terminate this Agreement with respect to any Site or Sites for failure to achieve Commercial Operation for such Site or Sites by the applicable Outside Commercial Operation Date. Notwithstanding the foregoing, the payment of Daily Delay Damages shall not limit Buyer’s right to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after Seller’s delay in achieving Commercial Operation by the applicable Outside Commercial Operation Date, (ii) as permitted by this Agreement, recover any damages not directly attributable to such delay, or (iii) terminate this Agreement with respect to any Site or Sites for failure to achieve Commercial Operation for such Site or Sites by the applicable Outside Commercial Operation Date. Seller shall have no opportunity to cure its failure to achieve Commercial Operation for any Site or Sites by the applicable Outside Commercial Operation Date through the payment of additional Daily Delay

Damages, and, upon the occurrence of such failure, Buyer may exercise its rights under Section 2.4.

Section 3.7 CEC Certification. Promptly, but in no event more than twenty (20) calendar days following the Commercial Operation Date, Seller shall file with the CEC all materials and documents required to demonstrate that the Facility is a solar photovoltaic facility entitled to be CEC Certified. Seller shall promptly provide Buyer with copies of all submittals to the CEC and other correspondence between Seller and the CEC. Failure by Seller to comply with the requirements set forth in this Section 3.7 shall constitute an event of default by Seller, subject to the cure periods set forth in Section 13.1(b).

Section 3.8 Decommissioning and Other Costs. Seller will be responsible for the restoration of the site, including decommissioning and demolition, to pre-project conditions at the end of the Agreement or at early termination of the Agreement due to Seller's default. Buyer will be responsible for restoration, decommissioning and demolition if Buyer purchases the Project per Section 14.23 herein or at early termination of the Agreement due to Buyer's default.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements. Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility in accordance with the Requirements, consistent with Prudent Utility Practices, and in a manner that is reasonably likely to maximize the output of Energy from the Facility and result in a useful life for the Facility of not less than twenty-five (25) years;

(b) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Authorized Representative, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(c) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and the Buyer's distribution system; and

(d) Comply with operating and maintenance standards required by the Facility's equipment suppliers and comply in all material respects with operating and maintenance standards recommended by the Facility's equipment suppliers.

Section 4.2 Operation and Maintenance Plan. Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

Section 4.3 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Requirements of Law.

Section 4.4 Scheduled Outage.

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of the Stub Period and each Contract Year (not to exceed twelve (12) weeks per Contract Year) (the “**Major Maintenance Blockout**”), but in accordance with Prudent Utility Practices. No later than one hundred twenty (120) days prior to the scheduled Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices.

(b) No later than sixty (60) days prior to the scheduled Commercial Operation Date and the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer’s Authorized Representative with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the “**Scheduled Outage Projection**”) reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer’s maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW capacity of the Facility, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer’s Authorized Representative of any change in the Scheduled Outage Projection as follows:

(i) Outage of forty-eight (48) hours or less – Seller shall notify Buyer a minimum of forty-eight (48) hours prior to the scheduled outage.

(ii) Outage if greater than forty-eight (48) hours – Seller shall notify Buyer a minimum of thirty (30) days prior to the scheduled outage.

(iii) Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(c) In the event of a Forced Outage affecting at least ten percent (10%) of the installed capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer’s Authorized Representative within two (2) hours after the commencement of the Forced Outage and, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the

cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity of the Facility, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD; GUARANTEES

Section 5.1 Guarantees.

(a) Subject to Section 5.1(b) and the other provisions of this Agreement, Seller shall use all reasonable efforts to assure that (i) it will perform, or cause to be performed, all engineering, design, development, construction, operation, and maintenance of the Facility in a good and workmanlike manner and in accordance with the Requirements; and (ii) throughout the Agreement Term (1) the Facility, its engineering, design and construction, its components, and related work, will be free from material defects caused by errors or omissions in design, engineering and construction, and (2) the Facility and all parts thereof will be designed, constructed, tested, operated, and maintained in compliance with the Requirements, all applicable requirements, as determined by the applicable county, state, or federal regulatory authority with jurisdiction over the Facility, of the latest revision of the ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, the Quality Assurance Program, and other codes and standards and operations and maintenance requirements applicable, as determined by the applicable county, state, or federal regulatory authority with jurisdiction over the Facility, to the services, equipment, and work by Seller or its contractors performed under this Agreement (clauses (i) and (ii), the “*Assurances*”).

(b) If it is ever determined that any Assurance has not been, or ceases to be, fulfilled, then Seller shall take such actions to address the situation (consistent with Prudent Utility Practices) as Seller determines in its reasonable discretion, including, potentially, by the prompt repair or replacement of any component of the Facility that does not comply with the foregoing Assurances. For the avoidance of doubt, (i) Seller shall not be in breach or default of Section 5.1 as a result of any Assurance not being (or ceasing to be) fulfilled as long as Seller complies with the immediately preceding sentence, and (ii) if any Assurance ceases to be fulfilled as a result of any change in any Requirement (or other standard referenced in the Assurances) following the date hereof, then Seller shall only be required to comply with such change to the extent required by Prudent Utility Practices or the express requirements of this Agreement.

(c) To the extent required by Prudent Utility Practices, Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

(d) Seller shall not, throughout the Agreement Term, alter, amend, modify or change the configuration of the Facility or any other facilities owned by an Affiliate of Seller, in such a manner as to cause the Facility to reduce the output below the Annual Contract Quantity specified in Appendix K.

(e) Seller shall obtain and maintain the Insurance required pursuant to Appendix F, and shall provide Buyer with reasonable evidence thereof, including certificates of insurance as may be required from time to time.

Section 5.2 Buyer's Right To Monitor In General. Subject to compliance with Seller's reasonable Site safety and access rules, upon reasonable prior written notice to Seller, Buyer shall have the right, and Seller shall permit Buyer and its representatives, advisors, engineers and consultants, to observe, inspect and monitor all operations and activities at the Site, including the performance of the contractors under the construction contracts pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and the achievement of Commercial Operation.

Section 5.3 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability of the Facility.

Section 5.4 Reporting and Information. Subject to Seller's right to reasonably redact confidential or proprietary information, Seller shall provide Buyer with such other information as may be reasonably requested by Buyer, and which is reasonably available to Seller, regarding the permitting, engineering, construction or operations of the Facility, and information regarding related subcontractors. Until the Commercial Operation Date, Seller shall provide to Buyer written reports describing permitting and development activities and anticipated progress and activities associated with the Facility in accordance with Section 3.6.

Section 5.5 Startup and Testing. Prior to the Commercial Operation Date, Buyer shall have the right to:

(a) review and monitor (at the Site) all initial performance tests during Facility start-up, and all other material tests required under the Facility construction contracts performed to achieve any Milestone, and Seller shall, or shall cause its contractors or subcontractors to, provide at least ten (10) Business Days' notice to Buyer before any such test begins;

(b) be present to witness such initial performance tests and review the results thereof; and

(c) perform such detailed examinations and inspections as, in the judgment of Buyer, are appropriate and advisable to determine that the Facility equipment and all ancillary components of the Facility have been installed in accordance with the Requirements, *provided* that Buyer may not unreasonably interfere with any activities of Seller or Seller's contractors or subcontractors, or Seller's ability to timely achieve a Milestone.

Section 5.6 Contract Provisions. Seller shall cause to be included in any construction contracts for the Facility the following provisions:

(a) Buyer with rights of access to the Facility and the work performed under such contract at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and

(b) that the personnel of, and consultants to, the contractors and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof.

Section 5.7 Quality Assurance Program. Seller shall develop or cause to be developed a written quality assurance policy ("*Quality Assurance Program*") in accordance with the requirements of Appendix H within sixty (60) days after the date Seller executes its primary contract for construction of the Facility in accordance with the Milestone Date therefor in Appendix I, and it shall be deemed to be an Assurance under Section 5.1 that Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

Section 5.8 Ownership and Operation. Subject to Section 14.7, the Facility shall be owned or controlled by Seller during the Agreement Term unless purchased by Buyer pursuant to terms of this Agreement. Seller shall not sell or otherwise dispose of any material portion of the Facility or any material property or assets that are related to the operation, maintenance and use of the Facility other than in the ordinary course of Seller's business and in a manner that would not materially impair Seller's ability to perform its obligations hereunder. The Facility shall be operated throughout the Delivery Term by (a) an Affiliate of SunPower, (b) a Person that has at least three (3) years of experience operating at least two (2) photovoltaic generating facilities with a capacity similar to or greater than that of the Facility, or (c) or a Person reasonably approved by Buyer, such approval not to be unreasonably delayed, withheld or conditioned.

Section 5.9 Seller Performance Security.

(a) Seller shall deliver to Buyer one or more letters of credit issued by Qualified Issuers, surety bonds, cash, or guarantees from Qualified Guarantors, or a combination thereof, in the forms attached hereto as Appendices E or G, as applicable, in the aggregate amount of One Hundred Eighty-seven Thousand Five Hundred Dollars (\$187,500), which amount shall be

replenished from time to time upon drawing to maintain the full balance at all times (the “**Project Development Security**”). Seller shall maintain such Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.9(b), or until Buyer is required to return the Project Development Security under Section 5.9(c) below. For the avoidance of doubt, the Project Development Security shall be furnished and maintained individually for the NEMA Sites and for the RES-BCT Site as shown in Appendix I.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers, surety bonds, cash, or guarantees from Qualified Guarantors, or a combination thereof, in the forms attached hereto as Appendices E or G, as applicable, in an amount of Two Hundred Twenty Five Thousand Dollars (\$225,000) which shall guarantee Seller’s obligations under this Agreement (the “**Delivery Term Security**”). Seller may elect to apply the Project Development Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain such Delivery Term Security until the end of the Agreement Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.9(e) below. For the avoidance of doubt, the Delivery Term Security shall be furnished and maintained individually for the NEMA Sites and for the RES-BCT Site as shown in Appendix I.

(c) If, upon the Commercial Operation Date, no liquidated damages (as expressly permitted in this Agreement) or other amounts are due and owing to Buyer under this Agreement, or if this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Project Development Security is outstanding, and if Seller does not elect to apply the Project Development Security toward the Delivery Term Security, then Buyer shall return to Seller the Project Development Security, less any amounts drawn by Buyer in accordance with this Agreement. The Project Development Security (or any portions thereof) shall be returned to Seller within ten (10) Business Days after (i) Seller’s provision of the Delivery Term Security, or (ii) the effective date of such early termination, so long as damages are no longer due and owing to Buyer.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages or GEP Shortfall Liquidated Damages hereunder, and after the expiration of all applicable cure periods, in the amount of such Daily Delay Damages or GEP Shortfall Liquidated Damages, as applicable, or (ii) upon Seller’s failure to make any payment due to Buyer hereunder in the amount of such unpaid payment; *provided*, that, in the case of a draw made under clause (ii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties. Promptly, and in no event more than fifteen (15) days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the amount set forth in Section 5.9(a) or Section 5.9(b), as applicable.

(e) Buyer shall return the unused portion of Delivery Term Security, if any, to Seller promptly as follows: (i) following the expiration or termination of the Agreement Term, including the exercise by Buyer of the Right of Buyout Option, and (ii) upon all of the obligations of Seller arising under this Agreement being paid (whether directly or indirectly such as through set-off or netting) or performed in full (excluding warranty obligations).

(f) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, then Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days after notice from Buyer to Seller requesting such replacement Performance Security.

(g) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller of the occurrence of any one of the following events:

(i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit;

(ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or

(iii) the issuer of the letter of credit becomes Bankrupt.

(h) If any Performance Security is in the form of a guarantee, then Seller shall provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller, of the occurrence of any one of the following events:

(i) the failure of the guarantor to make a payment thereunder immediately following Buyer's properly documented claim made pursuant to the guarantee in accordance with its terms;

(ii) any representation or warranty made by the guarantor in connection with this Agreement or the guarantee is false or misleading in any material respect when made or when deemed made or repeated;

(iii) the guarantor becomes Bankrupt;

(iv) the guarantee fails to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(v) the guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its guarantee.

(i) Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Requirements of Law the Performance Security and the rights of Buyer with respect to such Performance Security.

(j) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

ARTICLE VI PURCHASE AND SALE OF PRODUCTS

Section 6.1 Purchases by Buyer.

(a) Prior to the date that the Site(s), as defined in Appendix J, is CEC Certified, Seller shall sell and deliver, and Buyer shall receive and purchase the Products associated with Test Energy for the applicable Contract Price for Test Energy set forth in Section 1 of Appendix A.

(b) On and after the date that the Site(s), as defined in Appendix J is CEC Certified and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Delivered Energy and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.3(e) (other than Excess Energy) for the Contract Price for Delivered Energy (other than Excess Energy) set forth in Section 2 of Appendix A.

(c) Once the Site, as defined in Appendix J is CEC Certified, Seller may invoice and Buyer shall pay Seller for (i) each MWh of Delivered Energy delivered during the Pre-Certification Period and (ii) each MWh of Deemed Generated Energy during the Pre-Certification Period for which Buyer is required to pay Seller pursuant to Section 7.3(e), at a rate equal to the difference between (A) the applicable Contract Price for Delivered Energy set forth in Section 2 of Appendix A and (B) the applicable Contract Price for Test Energy set forth in Section 1 of Appendix A.

(d) On and after the date that the Facility is CEC Certified and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive the Products associated with Excess Energy for the applicable Contract Price for Excess Energy set forth in Section 3 of Appendix A.

Section 6.2 Seller's Delivery Obligation. Except as provided in Article IX, or in cases of Energy imbalances, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Unless excused by Buyer's failure to perform, Seller shall not sell any Energy or Environmental Attributes from the Facility to anyone other than Buyer.

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General.

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices to maximize the output of Facility Energy from the Facility. Seller shall bear all risks associated with delivery of all Facility Energy to the Point of Interconnection.

(b) Buyer shall be obligated to pay for all Facility Energy delivered to the Point of Interconnection.

Section 7.2 Forecasting of Energy.

(a) Except for Forced Outages, Seller shall use commercially reasonable efforts to operate the Facility with the objective that the actual Facility Energy shall be delivered in accordance with the Annual Contract Quantity, subject to Section 7.3. Notwithstanding anything to the contrary herein, Buyer acknowledges that the Facility is a non-dispatchable, intermittent generating facility.

(b) Throughout the Delivery Term, Seller shall provide to Buyer the following data on a real-time basis:

- (i) Read-only access to Facility availability information;
- (ii) Read-only access to Energy output information collected by the data acquisition system for the Facility; and
- (iii) Read-only access to all Electric Metering Devices.

Section 7.3 Curtailment.

(a) Seller shall reduce deliveries of Facility Energy to the Point of Interconnection during Curtailment Periods as directed by a Curtailment Order or a Buyer-Issued Curtailment Order; and, if required, Seller shall provide the capability to implement curtailments and adjust megawatt output. Seller shall be responsible for any costs or charges incurred by Buyer resulting from Seller's failure to comply with this Section 7.3(a).

(b) Buyer shall not be obligated to pay Seller for the amount of reduced Facility Energy during a Curtailment Period that result from a Curtailment Order.

(c) Buyer shall have the right to curtail deliveries of Facility Energy at any time and for the duration specified by Buyer by issuing a Buyer-Issued Curtailment Order. Buyer shall issue a Buyer-Issued Curtailment Order to Seller under this Section 7.3(c), and Seller shall comply with such Buyer-Issued Curtailment Order in accordance with Prudent Utility Practices. In its Buyer-Issued Curtailment Order, Buyer shall specify the duration of the Curtailment Period, which shall be for a minimum of thirty (30) minutes, and the time when Buyer wants Seller to resume delivery of Facility Energy to Buyer. To the extent Buyer requests any change in the duration of the requested Curtailment Period, Seller shall effectuate any such request. Seller shall respond to Buyer-Issued Curtailment Orders (including the end of such Curtailment Periods or a change in the duration of such Curtailment Periods) in accordance with Prudent Utility Practices. Buyer shall pay Seller for any Facility Energy curtailed pursuant to this Section 7.3(c) in accordance with the procedures set forth in Section 7.3(d) and Section 7.3(e).

(d) The Parties shall develop procedures to calculate the estimated amount of Deemed Generated Energy under this Section 7.3 based on historical Facility data, meteorological data, output projections and other relevant data. The calculation shall be subject to review and approval by Buyer, such approval not to be unreasonably withheld, delayed or conditioned. Any disputes related to the calculation of the Deemed Energy Amount will be resolved according to Section 11.3 and Section 14.3 of this Agreement.

(e) Buyer shall pay Seller an amount equal to (i) the applicable Contract Price multiplied by (ii) the amount of Deemed Generated Energy pursuant to Section 7.3(d) and such Deemed Generated Energy shall be included in the Seller Excused Energy Amount. Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Interconnection for any reason (including Force Majeure), except (i) as otherwise stated in this Section 7.3.

Section 7.4 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy prior to the Point of Interconnection, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy at and from the Point of Interconnection. Seller shall deliver all Delivered Energy, Capacity Rights, and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Delivered Energy, Capacity Rights, and Environmental Attributes shall pass from Seller to Buyer at the Point of Interconnection.

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Delivered Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Delivered Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer as promptly as reasonably possible and to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained within the applicable Contract Price for Delivered Energy as set forth in Articles VI and IX and Appendix A.

Section 8.2 Reporting of Ownership of Environmental Attributes. Throughout the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

Section 8.3 Environmental Attributes. Upon Buyer's request, Seller shall take all actions and execute all documents or instruments reasonably necessary under applicable law or

other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, Seller shall register at its sole expense, the facility in WREGIS or any successor system to evidence the transfer of any Environmental Attributes considered Renewable Energy Credits under applicable law or any voluntary program (“WREGIS Certificates”) associated with Facility Energy in accordance with WREGIS reporting protocols and satisfying the requirements of the RPS according to CEC regulations. After the Facility is registered with WREGIS, Seller shall to the extent permissible under WREGIS rules transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller’s WREGIS account to Buyer’s WREGIS account monthly based on the certificate timeline established by the WREGIS Operating Rules. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates.

Section 8.5 Further Assurances. Regardless of whether Seller and Buyer use WREGIS or any successor system, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Facility for the preceding month. The form of attestation is set forth as Appendix D. At Buyer’s request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer (or any of Buyer’s Members designated by Buyer) and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance. Subject to Section 8.7, Seller warrants that the Facility will be and shall remain RPS Compliant and EPS Compliant throughout the Agreement Term. Subject to Section 8.7, Seller shall assume any risks, costs or expenses associated with, arising from, or resulting from, its negligent failure to keep the Facility both RPS Compliant and EPS Compliant, including any costs or expenses incurred by Seller and paid directly to any third parties in connection with or related to greenhouse gas emissions reporting, WREGIS, or maintenance of a CEC certification and verification (the “**Compliance Costs**”).

Section 8.7 Change in Law. In the event of a Change in Law after the Effective Date that impacts the Environmental Attributes or the ability of the Facility to remain RPS Compliant or EPS Compliant, or that changes any Compliance Costs required to bring the Facility into RPS Compliance or EPS Compliance, Seller will take all commercially reasonable actions to continue

to satisfy Seller's warranty and obligations under Section 8.6, *provided* that in no event will Seller be obligated to spend more than Thirty Thousand Dollars (\$30,000) in any Contract Year or Stub Period, or Two Hundred Thousand Dollars (\$200,000) in the aggregate over the Agreement Term in order to satisfy Seller's warranty and obligations under Section 8.6. For the avoidance of doubt, such amounts shall be used by Seller solely for the purpose of modifying the Facility or for costs incurred by Seller to allow the Facility to comply with such Change in Law; provided, however, that such costs or expenses shall not include amounts incurred for lobbying activities. If a Change in Law occurs such that (a) Seller reasonably demonstrates that it would be required to incur, or has incurred, costs in excess of the limits set forth in this Section 8.7 in order to comply with such Change in Law and satisfy Seller's warranty and obligations under Section 8.6, or it is impossible for either Party to comply with such Change in Law, and (b) the Facility must comply with such Change in Law before Buyer can obtain the full benefit of the Environmental Attributes, Buyer shall nonetheless remain obligated to purchase the Products throughout the term of the Agreement at a mutually agreed upon energy index price in lieu of the Contract Price which will not include the value of the Environmental Attributes, but in no event shall the new price be more than the Contract Price.

ARTICLE IX GUARANTEED ENERGY PRODUCTION AND MAKEUP OF SHORTFALL ENERGY

Section 9.1 Guaranteed Energy Production and Seller Makeup of Shortfall. If Seller fails to deliver an amount of Delivered Energy equal to or greater than the Guaranteed Energy Production in the Stub Period or any Contract Year (a "**GEP Shortfall**"), then Seller shall cure the GEP Shortfall during the Contract Year immediately following the occurrence of the GEP Shortfall except for the last year of a RPS compliance period (the "**GEP Shortfall Makeup Period**"). During the GEP Shortfall Makeup Period, Seller may cure the GEP Shortfall by: (i) carrying forward excess generation from the preceding Stub Year or Contract Year above the Annual Contract Quantity, provided that such carried-forward excess generation does not exceed five percent (5%) of the Annual Contract Quantity for such preceding Stub Period or Contract Year, (ii) applying Delivered Energy from the Contract Year during which the GEP Shortfall Makeup Period occurs that exceeds the Guaranteed Energy Production for such Contract Year to cure the preceding Stub Period or Contract Year's GEP Shortfall, or (iii) providing Buyer with energy from a qualified renewable generating facility other than the Facility. In the event Seller is unable to cure the GEP Shortfall according to this Section 9.1, Seller shall pay Buyer GEP Shortfall Liquidated Damages in accordance with Section 9.2.

Section 9.2 Shortfall Liquidated Damages.

(a) If Seller does not cure the GEP Shortfall during the GEP Shortfall Makeup Period, Seller shall pay Liquidated Damages within sixty (60) days thereafter for any GEP Shortfall not cured. Seller shall pay Liquidated Damages for any GEP Shortfall which occurs during the last year of the Delivery Term. GEP Shortfall Liquidated Damages shall equal to the positive difference between the Contract Price and the Projected Bundled Retail Rate of electricity for the calendar year in which the shortfall occurs ("**Market Replacement Cost**") as specified in Appendix L, multiplied by the shortfall not made up during the GEP Shortfall Makeup Period.

(b) The Parties acknowledge and agree that the damages that Buyer would incur due to a GEP Shortfall would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of GEP Shortfall Liquidated Damages is a fair and reasonable remedy for such damages. The provision of GEP Shortfall Liquidated Damages shall be in lieu of actual damages for the occurrence of any GEP Shortfall hereunder that is not cured with Facility Energy, and notwithstanding any other provision of this Agreement, the GEP Shortfall Liquidated Damages shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to meet the Guaranteed Energy Production. Notwithstanding the foregoing, the GEP Shortfall Liquidated Damages shall not limit Buyer's rights to exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after the failure to meet the Guaranteed Energy Production.

Section 9.3 Shortfall Energy Termination. If Seller fails during each of any two (2) consecutive Contract Years, or in the Stub Period and Contract Year 1, to deliver an amount of Delivered Energy equal to or greater than sixty percent (60%) of the Guaranteed Energy Production for the applicable Contract Year or Stub Period, then Buyer, in its sole discretion, may within thirty (30) days after the end of the second such Contract Year, elect to either (a) collect the GEP Shortfall Liquidated Damages due pursuant to Section 9.2 and terminate this Agreement, *provided* that such termination will be without further liability to either Party; or (b) allow Seller to cure such failure by providing Buyer with payment of GEP Shortfall Liquidated Damages as described and Section 9.2. If Buyer fails to make an election within the thirty (30) day period described in the prior sentence, then Buyer shall be deemed to have elected option (b) in the prior sentence and waived its right to terminate this Agreement for Seller's failure to provide the Guaranteed Energy Production for the applicable Contract Years.

ARTICLE X CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Delivered Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. The consideration for the transfer of Capacity Rights is contained within the Contract Price for Delivered Energy. Without limiting any of Buyer's obligations hereunder, in no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

Section 10.2 Representation Regarding Ownership of Capacity Rights. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

Section 10.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other administrative action as required by the CAISO, or any applicable

Governmental Authority and as Buyer may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING;
ATTESTATIONS; POLICIES

Section 11.1 Billing and Payment. Billing and payment for all Delivered Energy (including all Test Energy) and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to this Agreement shall be as set forth in this Article XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) **Delivered Quantity.** For each month during the Agreement Term, commencing with the first month in which Energy is delivered by Seller to and received by Buyer under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such month and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to this Agreement as determined (i) in the case of Facility Energy, from recordings produced by the Electric Metering Devices maintained pursuant to Section 11.6, at or near midnight on the last day of the month in question, and (ii) in the case of Deemed Generated Energy, according to the procedures developed pursuant to Section 7.3(d).

(b) **Invoice.** Not later than the tenth (10th) day of each month, commencing with the month next following the month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount of Delivered Energy and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.3(e) during the preceding month (with a separate allocation for any Deemed Generated Energy) and Seller's computation of the amount due Seller in respect thereof. Monthly invoices shall be sent to the address set forth in Appendix C or such other address as Buyer may provide to Seller.

(i) Seller shall deliver to Buyer attestations of Environmental Attributes pursuant to Section 8.5 concurrently with the monthly invoices.

(ii) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period, except for invoices provided pursuant to Section 11.6, which must be received no more than six (6) months after the meter discrepancy is corrected. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number and the name, address and identifying information of Seller.

(c) **Payment.** Not later than the tenth (10th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such tenth (10th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

Section 11.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the Dispute, setting forth the details of such Dispute in reasonable specificity. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, “**Interest Rate**” shall mean the lesser of (i) two hundred (200) basis points above the per annum prime rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

Section 11.4 Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, in the event that either Party has not received payment for any undisputed invoice within sixty (60) days after receiving such invoice, then either Party shall have the right, upon notice to the other Party, to set off such amount against any amount owed by it under this Agreement or otherwise payable by the other Party to it under this Agreement, including any costs payable by the other Party hereunder (but specifically excluding any amounts due because of breach of this Agreement or arising as liquidated damages hereunder), if and to the extent paid in the first instance by the Party seeking set-off.

Section 11.5 Records and Audits. Seller shall maintain or shall cause to be maintained all records pertaining to the provision of Energy and other Products pursuant to this Agreement (including all billings, metering, and Environmental Attributes), and in particular all records to properly reflect all amounts billed to Buyer pursuant to this Agreement. Buyer and the Authorized Auditors may discuss such records with Seller’s officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors (redacted as may be appropriate with respect to confidential or proprietary information), for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records (redacted as may be appropriate with respect to confidential or proprietary information) or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at the Seller’s offices located at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records (redacted as may be appropriate with respect to confidential or proprietary information). To the extent any records entitled to be audited by Buyer are maintained by Seller in electronic format, then, at the request of Buyer, Seller shall provide the same in electronic format. Seller shall cause any Facility operators to comply with the provisions of this Section 11.5, as applicable. If the Authorized Auditor’s examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within ten (10) days of notice to Seller of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that Buyer’s overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. If the audit reveals that Buyer’s

overpayment to Seller is less than or equal to five percent (5.0%) of the billings reviewed, Seller and Buyer shall equally share expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within ten (10) days of notice to the Seller of such costs and expenses.

Section 11.6 Electric Metering Devices.

(a) Facility Energy shall be measured using a WREGIS-approved revenue-quality Electric Metering Device that complies with the WREGIS protocols and is dedicated exclusively to the Facility. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, and consents to Buyer obtaining all inspection, testing and calibration data and reports. If the meter data is adjusted for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 11.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days.

(b) Seller or its designee, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify such inspections and tests. Upon the reasonable request of Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Buyer. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than two percent (2%) an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than ten (10) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

Section 11.7 Taxes. Throughout the Delivery Term, Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement, including any ad valorem taxes, if applicable, and all Taxes imposed or assessed on Seller with respect to the Facility, the Facility site, any other assets of Seller, and all Taxes related to Seller's net income. Seller shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising up to and at the Point of Delivery, and Buyer shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising from the Point of Delivery. In the event Seller is required by any Requirement of Law to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under this Agreement; *provided* that, if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under applicable Laws. If either Party is exempt at any time from any Taxes, such Party shall bear the risk that such exemption shall be lost or the benefit of such exemption is reduced.

Section 11.8 Taxpayer Identification Number (TIN). Seller shall at all times during the Agreement Term have a TIN and provide appropriate evidence thereof to Buyer. No payment will be made under this Agreement without a valid TIN.

ARTICLE XII REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a validly existing California charter city and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which Buyer is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained.

(c) This Agreement and each of the Ancillary Documents to which the Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) The execution and delivery of this Agreement and each Ancillary Document to which Buyer is a party, the consummation of the transactions contemplated hereby and thereby and the performance of and compliance with the provisions of this Agreement and Ancillary Documents, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Buyer, except, in each case described in this clause (d), which would not, in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(e) There is no pending (service of process against Buyer having been made), or to the knowledge of Buyer, action or proceeding overtly threatened in writing against Buyer before any Governmental Authority that questions the legality, validity or enforceability of this Agreement or any of the Ancillary Documents.

(f) Subject to the Site Use Conditions described in attached Appendix O, Buyer grants to Seller, Seller's agents, employees, contractors, and assignees an irrevocable, royalty-free, non-exclusive license to access the Site and the Facility as necessary to allow Seller to perform its obligations and enforce its rights under this Agreement, including to design, install, operate, maintain, repair, or remove the Facility (the "**Site License**"). Buyer must take all actions necessary to protect Seller's rights under the Site License and preserve Seller's ability to access the Facility; and, Buyer must not permit any third party to interfere with Seller's rights under the Site License or Seller's access to the Facility. The Site License will run with the Site; and, Buyer may not sell, transfer, or assign its rights or title to the Site to any third party, unless such third party agrees to provide substantially similar Site access rights to Seller. If this Agreement expires or is terminated by either Party, for any reason, the Site License will remain in effect for ninety (90) days after such expiration or termination; however, if Seller determines that the removal of its property and the restoration of the Site cannot reasonably be accomplished within ninety (90) calendar days after the effective date of termination, Seller may request additional time, subject to Buyer's reasonable approval. Buyer's failure to comply with this Section or the requirements of the Site License will constitute a Default by Buyer. In addition, if Seller or Facility Lender requests, Buyer will execute a memorandum of lease in a form that is agreed to by Buyer and the requesting party; and, Seller, at its expense, may record such memorandum of lease with the appropriate land registry or recorder's office.

(g) Buyer will not obstruct, or permit any third party to obstruct, the Facility's access to sunlight. If Buyer obstructs, or becomes aware of a condition that may obstruct, the Facility's access to sunlight, Buyer must notify Seller immediately and cooperate with Seller to restore, at Buyer's expense, the Facility's access to sunlight. If the Facility's access to sunlight cannot be restored, then Seller may adjust applicable GEP calculations to account for the impact of the Facility's reduced access to sunlight, or, if Seller determines that the impact of such reduced access to sunlight is materially significant, then Seller may terminate this Agreement according to Section 13.3 and Buyer must pay to Seller the Termination Payment. For the avoidance of doubt, Buyer is not responsible for any reduction in access to sunlight that is caused by any

condition or object (such as utility poles, structures, or trees) that exist as of the Effective Date of this Agreement.

Section 12.2 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller is a corporation or limited liability company duly formed or organized, validly existing and in good standing under the laws of its respective state of incorporation or organization, is qualified to do business in the State of California, and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which it may be party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all Ancillary Documents.

(b) Seller has taken all corporate or limited liability company actions required to authorize the execution, delivery and performance of this Agreement and any Ancillary Document to which Seller is a Party, and Seller has delivered to Buyer: (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Seller as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Seller certifying as to the names and signatures of the authorized representatives of Seller.

(c) The execution, delivery and performance by Seller of this Agreement and all Ancillary Documents have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained, excluding any of the same in the nature of construction or similar Permits that are expected to be obtained in the ordinary course following the Effective Date.

(d) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Ancillary Documents, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby), and Seller has obtained or reasonably expects to timely obtain all Permits required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.

(e) Each of this Agreement and the Ancillary Documents constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating

to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(f) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any of the Ancillary Documents.

(g) Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Document to which it is a party.

(h) Seller has not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor. Seller has received reasonably equivalent value in exchange for its respective obligations under this Agreement and the Ancillary Documents. No petition in bankruptcy has been filed against Seller, and neither Seller nor any of its constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(i) Seller is, and shall remain throughout the Agreement Term, a Special Purpose Entity.

(j) Seller does not have any reason to believe that any of the Permits required to construct, maintain or operate the Facility in accordance with the Requirements will not be timely obtained in the ordinary course of business.

(k) All Tax returns and reports Seller required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon Seller and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller has no actual knowledge of any proposed or additional Taxes that would, if implemented or imposed, have a material adverse effect on Seller or the Facility.

(l) Seller owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of this Agreement and the Ancillary Documents and the transactions contemplated thereby, without any conflict with the rights of others.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any Facility Energy, Environmental Attributes, or Capacity Rights except as provided herein.

(n) Seller has obtained, and delivered to Buyer all certificates and other documents required to establish that the Insurance policies required by Appendix F as of the Effective Date are in full force and effect as of the Effective Date.

(o) Seller will comply with the Site Use Conditions contained within attached Appendix O.

Section 12.3 Covenant of Seller Related to Seller's Status as Special Purpose Entity. Seller shall at all times comply with the requirements of, and qualify as, a Special Purpose Entity. If at any time Seller fails to comply with any two of the covenants set forth in items (a) through (p) in the definition of "Special Purpose Entity" simultaneously, Seller shall provide Buyer written notice of such failure (an "**SPE Failure Notice**") within fifteen (15) Business Days of Seller's knowledge (for purposes of this provision, defined as the actual knowledge of the officers of Seller) of such failure. Seller shall provide Buyer with a written action plan specifying in reasonable detail Seller's analysis of the causes of such failure, the actions that Seller plans to take to correct such failure and the time needed to complete such corrective actions (such plan, an "**SPE Remedial Action Plan**") no later than thirty (30) days following delivery of an SPE Failure Notice. Seller may supplement the SPE Remedial Action Plan as may be reasonably required and Seller shall complete any and all further corrective action in accordance with such supplemented SPE Remedial Action Plan. Any deviations from the submitted SPE Remedial Action Plan must be reasonably acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned. The Parties agree that the time limit for delivering an SPE Remedial Action Plan shall not run for so long as the Parties are in good faith negotiating the contents of the SPE Remedial Action Plan. Buyer may require Seller to deliver a reasoned legal opinion (such opinion, a "**SPE Opinion**") from a reputable law firm within thirty (30) days following Buyer's written request if Buyer reasonably believes that there is a probable risk that in a properly presented and argued case under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "**Bankruptcy Code**") in which any Affiliate of Seller is the debtor, that a creditor or trustee of such Affiliate of Seller would have valid legal grounds to have a U.S. bankruptcy court or other court exercising bankruptcy jurisdiction over such a case under the Bankruptcy Code disregard the separate existence of Seller so as to cause the substantive consolidation of the assets and liabilities of Seller with those of such Affiliate. Seller's failure to prepare, deliver and act in accordance with an SPE Remedial Action Plan or, if applicable, to deliver an SPE Opinion, shall be a performance default pursuant to Section 13.1(b) hereof.

ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a "**Default**" by the responsible Party (the "**Defaulting Party**");

(a) *Buyer Payment or Performance Default.* Failure by Buyer to make any payment when and as due under this Agreement or any of the Ancillary Documents that is not cured within ten (10) Business Days after receipt of notice thereof from Seller, or to timely perform any of its other material duties or obligations under this Agreement or any of the Ancillary Documents that is not cured within thirty (30) days after receipt of notice thereof from Seller.

(b) *Seller Payment or Performance Default.* Failure by Seller to make any payment when and as due under this Agreement or any of the Ancillary Documents when and as due which is not cured within ten (10) days after receipt of notice thereof from Buyer, or to perform any of its other material duties or obligations under this Agreement or any of the Ancillary Documents (other than a breach or remedy for which a separate remedy is expressly set forth in this Agreement), when and as due which is not cured within forty-five (45) days after receipt of notice thereof from Buyer.

(c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Buyer in Section 12.1 of this Agreement or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof from Seller.

(d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Seller in Section 12.2 of this Agreement or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof from Buyer.

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer.

(f) *Seller Bankruptcy.* Bankruptcy of Seller.

(g) *Performance Security Failure.* The failure of Seller to maintain the Performance Security in compliance with Section 5.9, if such failure is not cured within ten (10) Business Days after receipt of notice thereof from Buyer.

(h) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of Insurance, if such failure is not cured within five (5) Business Days after receipt of notice thereof from Buyer.

(i) *Fundamental Change.* Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the “**Successor Entity**”) fails to assume all the obligations of Seller under this Agreement and the Ancillary Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement satisfactory to Buyer; or such Successor Entity has a long-term unsubordinated debt rating that is lower than the rating of Seller immediately prior to such consolidation, amalgamation, merger or transfer.

(j) *Seller Failure to Adhere to Site Use Conditions.* The failure of Seller to comply with Site Use Conditions as specified in Appendix O, if such failure is not cured within twenty-one (21) Business Days after receipt of notice thereof from Buyer.

(k) *Seller Failure to achieve Commercial Operation for all Sites by March 26, 2018.* The failure of Seller to achieve Commercial Operation for all Sites as specified in Appendix J by the RES-BCT Outside Commercial Operation Date of March 26, 2018.

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, Seller may (in its sole discretion) continue to provide Delivered Energy pursuant to this Agreement; *provided* that nothing in this Section 13.2(a) shall be deemed to waive or otherwise affect Seller's rights and remedies set forth in this Section 13.2(a). Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including the right to terminate this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any undisputed amounts then payable by Seller to Buyer under this Agreement, and (ii) termination of this Agreement pursuant to Section 13.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default.

(a) If Default occurs, the Party that is not the Defaulting Party (the "***Non Defaulting Party***") may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("***Termination Notice***") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("***Early Termination Date***") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its "***Termination Value***" as of the termination of this Agreement. The Non-Defaulting Party shall not be required to enter into any replacement agreement in order to determine its Termination Value.

(c) For purposes of the Non-Defaulting Party's determination of its Termination Value, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal the Assumed Daily Deliveries, and (ii) the Environmental Attributes associated therewith. The "***Assumed Daily Deliveries***" is an amount equal to the greater of: (x) the quotient of the Annual Contract Quantity divided by 365; and (y) if the date of the Agreement termination is after the last day of the second Contract Year, the average daily Facility Energy during the period from the Commercial Operation Date until the date of the Agreement termination (which average amount of daily Facility Energy shall be increased to account for Facility Energy that was not delivered but for which Buyer was obligated to pay Seller pursuant to Section 7.3(b)), and if the date of the Agreement termination is on or prior to last day of the second Contract Year, the projected average daily Facility Energy for the remaining life of the Agreement as determined by a qualified independent engineer mutually agreed by the Parties.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Value, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Value to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Value and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Value (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Value is paid.

(f) If Seller is the Defaulting Party, the Termination Value will be an amount equal to the sum of:

(i) Subject to Section 13.3(b) and Section 13.3(c), the net present value (using the Present Value Rate) of the Facility Energy and Environmental Attributes that would have been required to be delivered under this Agreement had it not been terminated, determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices, which shall be determined by calculating the average amount quoted by no fewer than three (3) bona fide third-party offers. If such quotes are in the form of bid ask prices, the price to be used shall be the mid-point between the bid ask prices. Such quotes shall be for like amounts of the same Products for the same Point of Interconnection and for the Remaining Term, if any, or such other commercially reasonable manner as may be required; provided that to ascertain the market prices of a replacement contract, Buyer may consider, among other valuations, quotations from dealers in energy contracts, end-users of the relevant Product, other market information, and bona fide third-party offers;

(ii) less the net present value (using the Present Value Rate) of the Facility Energy and Environmental Attributes that would have been required to be delivered under this Agreement at the Contract Price had it not been terminated; and

(iii) plus all costs reasonably incurred by Buyer to restore electric supply to service from its previous supplier and any costs incurred by Buyer related to the removal of the Facility, if applicable, excluding costs related to attorneys' fees or consultant fees;

(g) If Buyer is the Defaulting Party, the Termination Value will be an amount equal to the sum of:

(i) the net present value (using the Present Value Rate) of the Facility Energy and Environmental Attributes that would have been required to be delivered under this Agreement at the Contract Price had it not been terminated;

(ii) plus, reasonable compensation, on a net, after-tax basis (assuming a thirty-five percent (35%) tax rate, unless otherwise specified), for the loss of tax and depreciation benefits (including, as applicable the loss of any applicable Investment Tax Credit or MACRS accelerated depreciation), along with associated financing costs; and

(iii) plus, reasonable removal and storage costs incurred as the result of termination;

(h) If Buyer defaults, each Party must use commercially-reasonable efforts to mitigate both its damages and those suffered by the other Party. Commercially-reasonable efforts may include cooperating to attempt to enter into a contract to re-sell the Facility Energy and Environmental Attributes. However, neither Party is obligated to enter into such re-sale contract, nor is either Party obligated to factor the mitigating effect of such a contract into the calculation of its Termination Value, unless, that Party reasonably expects to execute such a contract within ninety (90) calendar days after termination becomes effective. For the avoidance of doubt, the Termination Value will be reduced by the projected amount of revenue to be earned under any re-sale contract that actually is executed.

(i) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional undisputed amounts, if any, payable by it under this Agreement that accrued before termination (including any amounts withheld pursuant to (a)(ii) above). The Termination Value shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, or any penalties or similar charges imposed by the Non-Defaulting Party. The Parties agree that (i) the actual damages that the non-Defaulting Party would incur would be difficult or impossible to predict with certainty, (ii) the Termination Value described herein is a reasonable and appropriate approximation of such damages, and (iii) the Termination Value described herein is the exclusive remedy of the non-Defaulting Party for damages in connection with the termination of the Agreement.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.2(b) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person, facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt in the case of registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail. A Party may change any address for notice hereunder by notice of such change to the other Party. Notwithstanding the foregoing, in no event can service of process be made by any means other than delivery in person.

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3 (a “**Dispute**”), either Party (the “**Notifying Party**”) may deliver to the other Party (the “**Recipient Party**”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “**Dispute Notice**”). An attempt to resolve the Dispute shall first be made by a meeting between senior management of both Parties that shall occur and be completed within thirty (30) days of the date of the Dispute Notice. The Parties may, by mutual agreement, extend the time for such meeting to occur or be completed. The meeting shall be held in the County of Riverside, California, unless otherwise agreed between the Parties, and be attended in person by senior officers of each Party having a title of senior vice president (or its equivalent) or higher and duly authorized to settle the Dispute. If the Dispute is not resolved by senior management of the Parties, it shall be finally settled by mediation or arbitration in a proceeding before a single arbitrator or arbitrator of JAMS who is selected by the Parties in accordance with the rules of JAMS and which shall be held in the County of Riverside, California, unless otherwise agreed by the Parties.

(b) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3 or Section 11.3, as applicable, by the expiration of periods of time set forth in such

Sections, then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement.

(c) As stated in Section 14.12, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute Resolution process set forth in this Section 14.3, but subject to Section 14.21 the Parties to this Agreement must comply with California law governing claims against public entities and presentment of such claims.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 14.5 No Dedication of Facilities. Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial discovery of the claimed Force Majeure) (the "***Force Majeure Notice***"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy at the Point of Interconnection due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Facility Energy not delivered or received by reason thereof. If a Force Majeure event occurs, it is understood by the Parties that the foregoing provisions shall not excuse the obligations of Seller to cure all GEP Shortfalls of prior Contract Years or the Stub Period, whether or not such cure is hindered by the Force Majeure event. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "***Force Majeure***" means an event or circumstance that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or

wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided or overcome; *provided*, nothing herein shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Force Majeure shall include but not be limited to any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “*Unexcused Cause*”): (1) any change in any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law that may affect only the value of the Energy purchased hereunder; (2) the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement, except to the extent caused by a separate Force Majeure event; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement; (6) failure of third parties to provide goods or services essential to a Party’s performance, except to the extent caused by a separate Force Majeure event; (7) Facility or equipment failure of any kind, except to the extent caused by a separate Force Majeure event; or (8) any changes in the financial condition of the Buyer, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement.

(c) Buyer may terminate the Agreement if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months from the date of the occurrence of the Force Majeure event; *provided* that, for the avoidance of doubt, any election by Seller to repair or replace the Facility following a confirmation by the independent engineer pursuant to clause (ii) hereof that such repair or replacement of the Facility can be completed within a period not to exceed twenty four (24) months from the date of the occurrence of the Force Majeure event shall toll Buyer’s termination right pursuant to clause (i) hereof, so long as Seller immediately undertakes best efforts to complete such repair or replacement within such twenty four (24) month period, and such repairs or replacement are complete no more than thirty (30) months from the date of the occurrence of the Force Majeure event. If, thirty (30) months from the date of the occurrence of the Force Majeure event, Seller has not completed such repairs or replacement of the Facility, Buyer may terminate this Agreement.

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, the Parties shall

discharge their payment obligations for any and all amounts hereunder that may be owing, including for any existing GEP Shortfall or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance Security less any amounts drawn by Buyer in accordance with this Agreement. The exercise by Buyer of its right to terminate the Agreement shall not render Buyer liable for any losses or damages incurred by Seller whatsoever.

Section 14.7 Assignment of Agreement.

(a) Except as set forth in this Section 14.7, neither Party shall assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(b) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement without the prior written consent of Buyer. Any purported sale, transfer, assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) Buyer may not assign this Agreement without the consent of Seller ; and, in connection with any such consented-to assignment any such assignee shall execute a written assumption agreement in favor of Seller (in form and substance reasonably satisfactory to Seller) pursuant to which any such assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement; *provided further* that Seller shall reasonably cooperate with such assignee to accommodate the technical requirements of such assignee (including as they relate to transmission and scheduling) to the extent that such accommodation does not require Seller to incur any increased cost or risk relative to the applicable terms and conditions of this Agreement. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(d) Except as provided in this Section 14.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. The Parties acknowledge that Seller expects to be required to collaterally assign this Agreement to Facility Lenders in connection with obtaining financing for the development, construction, purchase, installation or operation of the Facility. To facilitate Seller's obtaining such financing, Buyer shall reasonably cooperate with Seller and Facility Lenders to provide a consent to the collateral assignment of this Agreement (in form and substance satisfactory to Buyer) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; *provided, however*, that the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with reasonable prior notice (not less than forty five (45) days) of any such assignment to any Facility Lender. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer,

pursuant to this Section 14.7. Aforementioned reimbursement to Buyer not to exceed \$5,000 per reassignment.

(e) In no event shall Buyer be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement, and other than liability Buyer may have for a specific default or breach by Buyer under any agreement executed between Buyer and any Facility Lender. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of all of Seller's rights and obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be subject to any obligations under, or entitled to any of the benefits of, this Agreement.

(f) The consent to collateral assignment or other document executed between Buyer and any Facility Lender shall provide, among other things, as follows: (i) if a Facility Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or a sale of the Facility occurs through the actions of a Facility Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Facility Lender must itself assume or cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement as a condition of the sale or transfer; (ii) if this Agreement is rejected in any Seller bankruptcy or otherwise terminated in connection therewith and if a Facility Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure). Buyer and the Facility Lender (or the party taking possession of the Facility) shall promptly re-enter into this Agreement or enter into a new agreement having substantially the same terms as this Agreement for a time period equal to any remaining Agreement Term of the Agreement and (iii) mutually agreed provisions that define acceptable transferees and operators of the Facility.

Section 14.8 Ambiguity. 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.

Section 14.9 Attorney Fees & Costs. Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 14.10 Voluntary Execution. Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 14.11 Entire Agreement; Amendments. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 14.12 Governing Law. This Agreement was made and entered into in the County of Riverside and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

Section 14.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Riverside in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 14.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.16 Waiver. 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. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Each Party acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that the other Party may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Each Party hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative, except as expressly stated herein.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any

partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party..

Section 14.18 Third-Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Except as to the sole negligence, active negligence or willful misconduct of Buyer, Seller assumes liability for and agrees, at Seller's sole cost and expense, to promptly and fully indemnify, defend and hold Buyer, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgments, liens, stop notices, penalties, damages, losses, anticipated losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in any manner connected with, Seller's performance of this Agreement, including anyone employed by, working under or rendering services to Seller, notwithstanding that Buyer may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Seller or of anyone employed by or working under Seller. The parties expressly agree that any payment, attorneys' fees, costs or expense that Buyer incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

(b) **Damage or Destruction.** Subject to Section 14.6(c) and the rights of the Facility Lender, in the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by the Buyer or changes to the Site or other relevant conditions or the cost of materials or equipment will result in costs to Seller to restore the Facility that exceed one-hundred ten percent (110%) of the insurance proceeds received by Seller, provided Seller shall carry sufficient insurance at all times to ascertain that the Facility can be reasonably replaced or reconstructed to substantially the same general condition and use as existed prior to such damage or destruction. Subject to Section 14.6(c) and the rights of the Facility Lender, proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) **Condemnation or Other Taking.** For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Subject to the rights of the Facility Lender, without Buyer's prior written consent (not to be unreasonably withheld, delayed or conditioned), Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. To the extent reasonably practical, and approved by any Facility Lenders, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility, unless changes to the Site or other relevant conditions or the cost of materials or equipment will result in costs to Seller to restore the Facility that exceed one-hundred ten percent (110%) of the insurance proceeds received by Seller, provided Seller shall carry sufficient insurance at all times to ascertain that the Facility can be reasonably replaced or reconstructed to substantially the same general condition and use as existed prior to such damage or destruction..

(d) **Limitation of Liability.** Except to the extent included in the liquidated damages, indemnification obligations related to third-party claims, confidentiality obligations, or other specific charges expressly provided for herein, or except as to claims arising out of personal injury or property damage to the Site, or claims arising out of damages to Buyer's water production wells identified on Appendix J to, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity. In addition, Seller shall not be liable for any damages related the presence, discovery, clean-up, or removal of any substance or material that is regulated or classified by any Governmental Authority or under applicable law as "hazardous", "toxic", "polluting" or a "pesticide" ("Hazardous Materials") at the Site, unless, and to the extent, such damages are caused by Hazardous Materials that were introduced to the Site by Seller.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party or, if orally disclosed, anything clearly identified as "Confidential" at the time a Party shares such information

with the other Party ("**Confidential Information**"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, affiliates, or parent;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable Law, regulation, order, rule, order, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California public agency, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et. seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et. seq. ("**Brown Act**"). Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer's copying or releasing to a third party any of the Confidential Information of Seller when legally obligated to do so under the CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable Law the Performance Security contemplated by this

Agreement and the Ancillary Documents, and the rights of Buyer with respect to such Performance Security.

(e) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under the CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer, and specifically including costs of experts and consultants, as well as all actual damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all actual damages or liability of any nature.

Section 14.22 Mobile-Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

Section 14.23 Buyer's Option to Buyout Facility Before Expiration.

(a) *Buyer's Option to Purchase Facility Before Expiration.* If this Agreement has not been terminated and no Buyer Default has occurred that remains uncured according to this Agreement, then, either on the sixth (6th) yearly anniversary of the Commercial Operation Date or on the tenth (10th) yearly anniversary of the Commercial Operation Date, Buyer may elect to purchase the Facility, but is not obligated to do so (the "**Right of Buyout Option**" or "**Buyout Option**"). If Buyer elects to purchase the Facility according to this Section 14.23, Buyer must notify Seller of its intention to purchase the Facility, in writing, at least one-hundred eighty (180) days before the applicable yearly anniversary of the Commercial Operation Date; and, the purchase price for the Facility will be either the fair market value of the Facility (calculated according to this Section 14.23, the "Fair Market Value") or the then-applicable Termination Value for the Facility (calculated according to Section 13.3 as if Buyer was the Defaulting Party), whichever is greater. After Buyer has notified Seller of its intention to purchase the Facility, Buyer has paid to Seller any amounts currently owed, and the Parties have reached agreement regarding the purchase price for the Facility, then Buyer and Seller will execute all documents

necessary to effectuate the sale and transfer of the Facility, after Seller has removed, at its expense, any encumbrances that have been placed on the Facility, title to the Facility will transfer to Buyer on an as-is, where-is basis.

(i) *Fair Market Value.* Within thirty (30) calendar days after Buyer has notified Seller of its intention to purchase the Facility, the Parties will jointly select and appoint a nationally-recognized, independent appraiser, who has experience and expertise valuing solar photovoltaic generating facilities, to determine the Fair Market Value for the Facility as of the date that such appraiser accepted the appointment. Notwithstanding the final Fair Market Value determination, Buyer, upon written notice to Seller, may, without liability, terminate the Buyout Option in motion and such termination shall not hinder Buyer's ability to exercise any future Buyout Option opportunity.

(b) *Right of First Offer.* In addition to Buyer's right to purchase the Facility according to Section 14.23(a), Buyer has a "Right of First Offer" for any proposed sale of the Facility by Seller, all in accordance with the provisions of this Section 14.23. Prior to Seller consummating a sale of the Facility, Seller shall provide notice to Buyer of Seller's proposed sale (a "**Proposed Sale Notice**"). Upon receipt of such notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility from Seller. If Buyer does not provide such a notice, then, subject to the requirements of Section 14.7, Seller may sell the Facility to any third party, provided that if a sale is not consummated within eighteen (18) months following the date of the Proposed Sale Notice, then Seller must provide Buyer with another Proposed Sale Notice hereunder (and go through the process set forth herein) before consummating any such sale. If Buyer provides a notice in response to Seller's Proposed Sale Notice indicating that Buyer is interested in purchasing the Facility, then the Parties shall undertake, for a period up to thirty (30) days from the date of Buyer's response to Seller, to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility to Buyer. If the Parties are unable to reach a mutual agreement, then, subject to the requirements of Section 14.7, Seller may sell the Facility to any third party, provided that if a sale is not consummated within eighteen (18) months following the date of the expiration of such thirty (30) day period, Seller must provide another Proposed Sale Notice hereunder (and go through the process set forth herein) before consummating any future sale of the Facility, and provided further that any such sale shall not be for an aggregate purchase price less than the aggregate purchase price last offered by Seller to Buyer in writing during the thirty (30) day negotiation period. The Right of First Offer shall not apply to any sale-leaseback or similar Facility financing by Seller, to any transfer of the Facility to Facility Lender by deed in lieu of foreclosure, to any transfer of the Facility from Facility Lender to SunPower Corporation, Systems, a Delaware Corporation, or its affiliates, or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents.

Section 14.24 Buyer's Option for System Expansion. Buyer has the option to expand this Agreement in the future to add additional generation capacity or energy storage facilities at existing sites herein or at additional property owned by the Buyer in San Bernardino County or within Riverside's city limits, provided that Buyer and Seller can mutually agree on terms and conditions for the expansion.

Section 14.25 Service Contract. The Parties do not intend for this Agreement to constitute a lease of the Facility to, or sale of the Facility to, Buyer; and, the Parties do not intend for this Agreement to be interpreted as permitting the use of the Facility by Buyer. Instead, the Parties intend for this Agreement to be a “service contract,” as defined by Section 7701(e)(3) of the Internal Revenue Code, and for the transaction described in this Agreement to constitute a “forward contract,” as defined by the United States Bankruptcy Code, and that Buyer and Seller each constitute “forward contract merchants.” Under this Agreement, Seller intends that it shall not be construed to be dedicating the Facility to public use or subjecting itself to regulation as a “public utility” – Seller is not providing electric utility services to Buyer or interfering with Buyer’s ability to choose an electric utility service provider. Buyer makes no representations or warranties as to the intentions set forth herein.

Section 14.26 Possessory Interest Tax. Seller recognizes and understands that this Agreement may create a possessory interest subject to taxation and that Seller may be subject to the payment of taxes levied on such interest. Seller shall pay all taxes including without limitation any possessory interest, real estate and personal property taxes and assessments assessed, levied, confirmed or imposed during the term of this Agreement, whether or not now customary or within the contemplation of the parties: (i) upon, measured by or reasonably attributable to the cost or value of Seller’s equipment, furniture, fixtures and other personal property located in or on the Site, or by the cost or value of any leasehold improvements made in or to the Site by or for Seller; (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Seller of the Site or any portion of the Site; (iii) upon the Site and all personal property, furniture, fixtures and equipment, and all replacements, improvements, or additions to them; and (iv) upon this transaction or any document to which Seller is a party creating or transferring and interest or an estate in the Site.

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Each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

City of Riverside

Date: _____

By: _____

Attest: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

Solar Star California XXXIX, LLC
By: SUNPOWER ASSETCO, LLC as sole member
of Solar Star California XXXIX, LLC

Date: 11/22/2016

By: David McIlhenny

Its: Vice President

Attest: *D. McIlhenny*

APPENDIX A
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

CONTRACT PRICE

1. Test Energy. The Contract Price for Test Energy shall be an amount equal to seventy percent (70%) of the Contract Price for Delivered Energy.
2. Delivered Energy. 5.775 cents per kWh for Contract Year 1 (inclusive of Stub Period) and escalated by three percent (3%) per year thereafter
3. Excess Energy. The Contract Price for Excess Energy shall be an amount equal to seventy-five percent (75%) of the Contract Price for Delivered Energy.
4. Acknowledgments. The Parties acknowledge and agree that (a) Seller is selling to Buyer, and Buyer is purchasing from Seller, all of the Products produced by the Facility, (b) the Products include, but are not limited to, all Facility Energy, all associated Environmental Attributes, and any Capacity Rights (including all Resource Adequacy Attributes and all Local Capacity Requirement Attributes) that may at any time during the Agreement Term exist and be associated with such Facility Energy, (c) although monthly payments hereunder from Buyer to Seller determined under Agreement Article XI are based on the quantity of Deemed Generated Energy, Delivered Energy delivered to the Point of Interconnection, and the Contract Price (as adjusted under this Appendix A), such payments are full compensation for such Deemed Generated Energy, Delivered Energy, and all other Products associated therewith, and (d) the actual amounts payable each month from Buyer to Seller under Agreement Article XI are subject to certain adjustments expressly provided for in the Agreement, including Section 6.1(c), Section 7.3(b), and Section 7.3(e).

APPENDIX B
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC
FACILITY, PERMITS, AND OPERATOR

1. Name of Facility: San Bernardino Wells Solar PV Project
2. Location: San Bernardino, CA

[See Appendix J for detailed description of the site locations]
3. Owner: Solar Star California XXXIX, LLC
4. Operator: Solar Star California XXXIX, LLC
5. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Capacity: 4.44 MW (AC)
 - (c) Capacity Factor: 25.65%*

Total nominal net capacity under expected average Site conditions: 4.44 MW (AC)
6. Interconnection: Located on-site behind the meter

* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design, and other factors. Nonetheless, the Annual Contract Quantities in Appendix K and the Guaranteed Energy Production amounts are fixed for all purposes under the Agreement.

**APPENDIX C
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC**

**BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT
INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer's Authorized Representative:

Public Utilities General Manager
Riverside Public Utilities
3750 University Avenue, 3rd Floor
Riverside, CA 92501
Phone: (951) 826-8912
Facsimile: (951) 826-2450

1.2 Seller's Authorized Representative

Julie Williamson
Contracts Administrator
SunPower Corporation, Systems
77 Rio Robles
San Jose, CA 95134
Phone: (512) 735-0353

2. **Billings and Payments.** Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Water Engineering Manager
Riverside Public Utilities
3750 University Avenue, 3rd Floor
Riverside, CA 92501
Phone: (951) 826-5285
Facsimile: (951) 826-2498

2.2 If Payment to Buyer:

Water Engineering Manager

Riverside Public Utilities
3750 University Avenue, 3rd Floor
Riverside, CA 92501
Phone: (951) 826-5285
Facsimile: (951) 826-2498

2.3 If Billing to Seller:

Jerri Williams
Compliance & Contracts Administration Manager
SunPower Corporation
2900 Esperanza Crossing
Austin, TX 78758

2.4 If Payment to Seller:

Jerri Williams
Compliance & Contracts Administration Manager
SunPower Corporation
2900 Esperanza Crossing
Austin, TX 78758

3. **General Notices.** Unless otherwise specified by Buyer all notices (other than Facility forecasting and scheduling notices) required under the Agreement shall be sent by facsimile transmission, reliable overnight courier, and registered or certified mail, postage prepaid, to the address specified below.

If to Buyer:

Public Utilities Assistant General Manager, Water
Riverside Public Utilities
3750 University Avenue, 3rd Floor
Riverside, CA 92501
Phone: (951) 826-5791
Facsimile: (951) 826-2450

If to Seller:

Jerri Williams
Compliance & Contracts Administration Manager
SunPower Corporation
2900 Esperanza Crossing
Austin, TX 78758

**APPENDIX D
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC**

FORM OF ATTESTATION

_____**(Seller)**_____ **Environmental Attribute Attestation and Bill of Sale**

Pursuant to that certain Power Purchase Agreement ("Agreement") dated as of _____, between _____ ("Seller") and the City of Riverside ("Buyer"), Seller hereby sells, transfers and delivers to Buyer the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below. Capitalized terms used and not defined herein have the meaning in the Agreement, unless the context requires otherwise.

Facility name and location:

Fuel Type:

Capacity (MW): _____ Operational Date:

As applicable: CEC Reg. no. _____ Energy Admin. ID no. _____ Q.F. ID no. _____

| <u>Dates</u> | <u>MWhs generated</u> |
|--------------|-----------------------|
| _____ 20__ | _____ |
| _____ 20__ | _____ |
| _____ 20__ | _____ |

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the Point of Interconnection the Facility Energy in the amount indicated above; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Facility Energy, and the same have been sold to Buyer.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Facility Energy delivered to the Point of Interconnection.

Contact Person: _____ tel: _____

APPENDIX E
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

FORM OF LETTER OF CREDIT

IRREVOCABLE DOCUMENTARY
LETTER OF CREDIT NO. _____

Applicant:

Beneficiary:

City of Riverside
[Address]

Telephone:

Facsimile:

Amount:

Expiry Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment

- (a) upon presentation to us at our office at [bank's address],¹ of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon both your telephone or fax advice of demand to the attention of _____ at telephone and/or fax number _____ and presentation to us by fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.²

¹ Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

² Note to Issuer: If the office specified for presentation is outside of Los Angeles, California, alternative (b) must appear in the Letter of Credit when issued. If the office is in Los Angeles, California, alternative (b) may be included only if the bank establishes and maintains with the City of Riverside the necessary electronic arrangements.

ANY FAX PRESENTATION MUST BE RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING, NOT CONTINGENT UPON PRESENTATION OF THE ORIGINAL DOCUMENTS WITH RESPECT THERETO.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing, we will, within three business days after such presentation, but without any other delay whatsoever, irrevocably and without reserve or condition pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business due to the reasons specified in article 36 of UCP, this Letter of Credit will be duly honored if the specified statements are presented by you within three (3) full banking days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction, which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the City of Riverside set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by such a successor, such drawing must be accompanied by proof of successorship and the following signed certification:

“The undersigned does hereby certify that _____ [drawer] _____ is the successor by operation of law to City of Riverside a beneficiary named in [name of Bank] Letter of Credit no.

_____.

[name and title]

Except so far as otherwise expressly stated herein, this documentary credit is subject to the “Uniform Customs and Practices for Documentary Credits,” International Chamber of Commerce, in effect on the date of issuance of this credit (“UCP”).

Yours faithfully,
(name of issuing bank)

By _____

Title _____

EXHIBIT I

Demand for Payment

Re: Irrevocable Letter of Credit
No. _____ Dated _____, 20__

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$_____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable Letter of Credit no. _____ dated _____, 20__ in the amount of \$_____ established by you in our favor for the account of _____ as the Applicant.

DATED: _____, 20__.

CITY OF RIVERSIDE

By _____
Title _____

EXHIBIT II

Statement

Re: Irrevocable Letter of Credit
No. _____ Dated _____, 20____

To Whom It May Concern:

Reference is made to your Irrevocable Letter of Credit no. _____, dated _____, 20____ in the amount of \$_____ established by you in our favor for the account of _____.

We hereby certify to you that \$_____ is payable to us as provided in our agreement with the Applicant.

DATED: _____, 20__.

CITY OF RIVERSIDE

By _____
Title _____

EXHIBIT III

Amendment

Re: Irrevocable Letter of Credit
No. _____ Dated _____, 20__

Beneficiary:

Applicant:
City of Riverside
[Address]

To Whom It May Concern:

The above referenced Irrevocable Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ _____ to a new stated amount of \$ _____ or by extending the expiration date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

[To be included only if the amendment is for decrease]

This amendment is effective only when accepted by the City of Riverside, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____

Title _____

ACCEPTED (To be required only in the event of a decrease)

CITY OF RIVERSIDE

By _____
Title _____
Date _____

APPENDIX F
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

INSURANCE

1. Minimum Scope.

Prior to Buyer's execution of this Agreement and Seller's commencement of work, Seller shall secure, submit proof of and shall thereafter maintain without interruption, until completion of the Agreement, such commercial general and automobile liability insurance as shall protect Seller, its subcontractors and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under the Agreement.

2. Carrier Ratings.

All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

3. Minimum Limits.

Seller shall maintain minimum limits of insurance as follows:

3.1 Commercial General Liability: Seller's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, an aggregate limit for products/completed operations in the amount not less than \$2,000,000. The aggregate limit specified herein may be satisfied through one or more excess liability policies.

3.2 Automobile Liability Insurance: Seller's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. The automobile liability insurance policies shall cover all vehicles used in connection with Seller's performance of this Agreement, which vehicles shall include, but are not limited to, Seller-owned vehicles, Seller-leased vehicles, Seller's employee vehicles, non-owned vehicles and hired vehicles.

3.3 Builder's Risk Insurance. Seller acknowledges that the Buyer retains its own builder's risk policy. Unless otherwise set forth in the special provisions, Seller should obtain builder's risk insurance.

4. **Notice of Cancellation and Renewals.** In the event Seller's insurance carrier provides to Seller a notice of cancellation, Seller shall give notice to Buyer within ten (10) calendar days of receipt of the notice received from the carrier. Notice to Buyer shall be sent by registered mail to Buyer's Authorized Representative as identified in Appendix C (this obligation may be satisfied in the alternative by requiring such notice to be provided by Seller's insurance broker and set forth on its Certificate of Insurance provided to Buyer). Seller agrees that upon receipt of any notice of cancellation of the policies, Seller shall procure within fourteen (14) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Seller shall furnish to the Buyer copies of any endorsements that are subsequently issued amending coverage or limits within thirty (30) days of the amendment.
5. **All Coverage's.** The insurance policy or policies shall also comply with the following provisions:
 - (a) Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
 - (b) The policy shall be endorsed to waive any right of subrogation against the Buyer and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.
 - (c) If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **five (5) years** after completion of the Agreement. The retroactive date of the coverage must also be listed.
 - (d) The policy shall specify that the insurance provided by Seller will be considered primary and not contributory to any other insurance available to the Buyer. Seller shall provide a non-contributory endorsement for additional insureds to Buyer.
 - (e) All policies of insurance (except for workers' compensation) shall name the Buyer as an Additional Insured and shall contain the following language on the certificate of insurance: "The City of Riverside, its City Council and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, and council members are named as additional insureds where required by written contract.""
6. **Certificates of Insurance, Additional Insured Endorsements and Deductibles.** Prior to execution of the Agreement, and thereafter upon Buyer's request, Seller shall furnish Buyer with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Blanket endorsements are accepted.
7. **Seller's Failure to Provide Required Insurance.** Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Seller shall immediately notify Buyer and cease all performance under this agreement until further directed by the Buyer. In the absence of satisfactory insurance coverage, Buyer may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys' fees and costs against Seller by way of set-

off or recoupment from sums due Seller; (b) immediately terminate or suspend Seller's performance of the agreement; (c) pay Seller's premiums for renewal of Seller's coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys' fees and costs, being collectible from Seller, by way of set-off or recoupment from any sums due Seller. Upon demand, Seller shall repay Buyer for all sums that Buyer paid to obtain, renew, reinstate or replace the insurance, or Buyer may offset the cost against any monies that the Buyer may owe Seller.

8. Verification of Coverage.

Buyer shall have the right to obtain endorsements or certificates required, upon request.

9. Seller's Insurance for Other Losses.

The Seller and its subcontractors of every tier shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Seller's (or subcontractors') employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Seller, or the Seller's agents, suppliers or subcontractors as well as to any temporary structures, scaffolding and protective fences.

10. No Limitation.

Seller's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Seller or its subcontractors of any tier to the coverage provided by such insurance, or otherwise limit the Buyer's recourse to any remedy available at law or in equity.

11. Subcontractors' Insurance.

Subcontractors of every tier shall obtain and maintain, at a minimum, all insurance required by this appendix

Seller shall ensure that any professional engineer retained on its behalf to provide supplemental plans and engineering calculations required in conjunction with the Agreement, maintains professional liability insurance during the entire term of this Agreement. Such insurance shall be in the minimum amount of \$1,000,000 to protect Buyer from claims resulting from the engineer(s) activities. This minimum amount of coverage shall not constitute any limitation or cap on Seller's indemnification obligations set forth herein.

The Buyer reserves the right to request certificates of insurance from each subcontractor.

APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

FORM OF GUARANTEE

This Guarantee dated as of [_____] is made by [_____] (the “**Guarantor**”) in favor of CITY OF RIVERSIDE, a municipal corporation created under the laws of the State of California (the “**Beneficiary**”).

ARTICLE ONE

Section 1.01 Guarantee.

(a) For valuable consideration in connection with [identify PPA and Ancillary Documents as appropriate, as each may hereafter be amended, supplemented or otherwise modified from time to time, collectively, the “**Guaranteed Contract**”] with (Counterparty/Seller name and description to the underlying Guaranteed Contract, the “**Counterparty**”) subject to the terms and conditions set forth herein and effective from the date herein, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary, its successors and permitted assigns, the prompt payment on demand, in lawful money of the United States, of any amount due and payable to the Beneficiary arising out of or under the Guaranteed Contract, when the same shall become due, whether at stated maturity, by acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) subject to any applicable grace period thereunder and the prompt and proper performance by the Counterparty of all of its other obligations to the Beneficiary pursuant to the Guaranteed Contract (collectively, the “**Guaranteed Obligations**”). This is a guarantee of payment and not merely a guarantee of collection, and the Guarantor is liable as a primary obligor for the amounts due hereunder. The Beneficiary shall make demands for payment hereunder by providing the Guarantor with written notice as provided below, and the Guarantor shall make payments within five (5) business days after receipt of any such notice. The Guarantor shall make each payment to the Beneficiary in U.S. Dollars in immediately available funds as directed by the Beneficiary. Notwithstanding any other provision of this Agreement, the Guarantor’s aggregate liability under this Guarantee is limited to _____ U.S. Dollars (US\$_____).

(b) The obligations of Guarantor hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash and performance of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees that: (a) Beneficiary may enforce this Guarantee upon the occurrence and during the continuance of a default or early termination event under the Guaranteed Contracts notwithstanding the existence of any dispute between Counterparty and Beneficiary with respect to the existence of such event; (b) the obligations of Guarantor hereunder are independent of the obligations of Counterparty under the Guaranteed Contracts and the obligations of any other

guarantor of obligations of Counterparty and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Counterparty or any of such other guarantors and whether or not Counterparty is joined in any such action or actions; and (c) Guarantor's payment or performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid or performed. This Guarantee is a continuing guaranty and shall be binding upon Guarantor and its successors and assigns, and Guarantor irrevocably waives any right (including any such right arising under California Civil Code Section 2815) to revoke this Guarantee as to future transactions giving rise to any Guaranteed Obligations.

(c) Any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Counterparty (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantor and Beneficiary that the Guaranteed Obligations should be determined without regard to any rule of law or order that may relieve Counterparty of any portion of such Guaranteed Obligations.

(d) Upon the failure of Counterparty to pay or perform any of the Guaranteed Obligations when and as the same shall become due, Guarantor will upon demand pay, or cause to be paid, in cash, to Beneficiary an amount equal to the aggregate of the unpaid Guaranteed Obligations.

(e) This Guarantee shall terminate only upon the full satisfaction of the Guaranteed Obligations. If, notwithstanding the foregoing, Guarantor shall have any non-waivable right under applicable law or otherwise to terminate or revoke this Guarantee, Guarantor agrees that the termination or revocation shall not be effective until a written notice of the termination or revocation is received by Beneficiary and shall not affect the rights and powers of Beneficiary to enforce rights arising prior to receipt of the notice. Any rights arising out of advances or actions by Beneficiary after Guarantor's termination or revocation but prior to receipt of the requisite notice shall be the same as if the termination or revocation had not occurred.

Section 1.02 Guarantee Absolute.

(a) To the extent required hereunder, the Guaranteed Obligations will be paid strictly in accordance with the terms of the Guaranteed Contract, regardless of any bankruptcy or other law affecting any of such terms or the rights of the Beneficiary with respect thereto. The Guarantor's obligations under this Guarantee shall not be impaired by any increase, reduction, extension, rearrangement or subordination of the Guaranteed Obligations, any amendment, supplement, or other modification of the Guaranteed Contracts, any grant or impairment of any security or support for the Guaranteed Obligations, the failure to give notice of any default or event of default, however denominated, under the Guaranteed Contracts or of the bringing of action to enforce the payment or performance of the Guaranteed Obligations or any other notice of any kind relating to the Guaranteed Obligations, or any other action which affects the Guaranteed Obligations.

(b) Guarantor further agrees that, to the extent that the Counterparty or the Guarantor makes a payment or payments to the Beneficiary which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to the Counterparty or the Guarantor or their respective estate, trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then to the extent of such payment or repayment, this Guarantee and the advances or part thereof which have been paid, reduced, or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction, or satisfaction occurred.

ARTICLE TWO

Section 2.01. Severability.

(a) In case any one or more of the provisions of this Guarantee shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties to this Guarantee that such illegality or invalidity shall not affect any other provision hereof, but this Guarantee shall be construed or enforced as if such illegal or invalid provision had not been contained herein unless such a court holds that such provisions are not separable from other provisions of this Guarantee.

(b) The obligations hereunder are joint and several, and independent of the obligations of Counterparty, and a separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Counterparty or whether or not Counterparty is joined in any such action or actions.

ARTICLE THREE

Section 3.01. Guarantor's Warranties.

Guarantor makes the following representations and warranties to Beneficiary:

(a) (i) this Guarantee is executed at Beneficiary's request; (ii) Guarantor has not and will not without prior written consent of Beneficiary, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; and (iii) Guarantor has adequate means of obtaining from Counterparty on a continuing basis financial and other information pertaining to Counterparty's financial condition without relying on Beneficiary therefor;

(b) Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which Guarantor consider material or which might in any way affect Guarantor's risks hereunder. With respect to information or material acquired in the normal course of Beneficiary's relationship with Counterparty, Guarantor agrees that Beneficiary shall have no obligation to disclose such information or material to Guarantor;

(c) Guarantor is a [____], duly organized, validly existing and in good standing under the laws of the State of [____], and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Guarantee

and effect the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Guarantee;

(d) the execution, delivery and performance by Guarantor of this Guarantee and has been duly authorized by all necessary action, and do not and will not require any consent or approval of Guarantor's managing member or equity holders or other Person other than that which has been obtained;

(e) the execution and delivery of this Guarantee and the fulfillment of and compliance with the provisions of this Guarantee do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other governmental authority, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Guarantor is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any lien or encumbrance upon any of the properties or assets of Guarantor; and

(f) this Guarantee constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

ARTICLE FOUR

Section 4.01. Waivers.

(a) It shall not be necessary for the Beneficiary, in order to enforce this Guarantee, to exhaust the Beneficiary's remedies against the Counterparty, to enforce any security or support for the payment or performance of the Guaranteed Obligations, or to enforce any other means of obtaining payment or performance of the Guaranteed Obligations. The Guarantor waives any rights under applicable state law related to the foregoing. Until irrevocable payment in full and performance of the Guaranteed Obligations, the Guarantor will not exercise any right of subrogation (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or under applicable state law) or any right to participate in any claim or remedy of the Beneficiary against the Counterparty, but this standstill is not intended as a permanent waiver of the subrogation rights of the Guarantor. To the extent permitted by law, Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof, and agrees that any payment of any obligation or other act which shall toll any statute of limitations applicable to the obligation shall also operate to toll such statute of limitations applicable to Guarantor's liability hereunder. The liability of Guarantor hereunder shall be reinstated and revived and the rights of Beneficiary shall continue with respect to any amount paid by Counterparty on account of the obligations guaranteed hereby, which shall thereafter be required to be restored or returned by Beneficiary upon the bankruptcy, insolvency or reorganization of Counterparty or for any other reason, all as though such amount had not been paid. The Guarantor hereby waives notice of acceptance of this Guarantee and notice of any

obligation or liability to which it may apply, and waives presentment, demand for payment or performance, protest, notice of dishonor or non-payment or non-performance of any such obligation or liability, suit or the taking of other action by Beneficiary against, and any other notice to, the Counterparty, the Guarantor or others. Any other suretyship defenses are hereby waived by the Guarantor. This Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full in cash and performance of the Guaranteed Obligations). The Beneficiary shall not be required to inquire into the capacity or powers of Guarantor or Counterparty or the officers, directors or any agents acting or purporting to act on behalf of any of them.

(b) In addition to the foregoing, Guarantor specifically waives:

(i) any right to require Beneficiary to (A) proceed against any person, including Counterparty; (B) proceed against or exhaust any collateral held from Counterparty, and other endorser or guarantor or any other person; (C) give notice of terms, time and place of any public or private sale of personal property or real property security held from Counterparty or comply with any other provisions of Section 9504 of the California Uniform Commercial Code or sections 2924 through 2924k of the California Civil Code, to the extent allowed by law; (D) pursue any other remedy in Beneficiary's power; or (E) make any presentments, demands for performance, or give any notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any obligations or evidences of indebtedness held by Beneficiary as security, in connection with any obligations or evidences of indebtedness which constitute in whole or in part the obligations guaranteed hereunder, or in connection with the creation of new or additional obligations;

(ii) in accordance with Section 2856 of the California Civil Code, any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;

(iii) any defense arising by reason of (A) the incapacity, lack of authority or any disability or other defense of Counterparty, any other endorser or guarantor or any other person, including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Counterparty from any cause other than payment in full in cash and performance of the Guaranteed Obligations; (B) the cessation from any cause whatsoever, other than payment and performance in full of the obligations of Counterparty, of the liability of Counterparty, any endorser or guarantor or any other person; (C) the application by Counterparty of the proceeds of any obligations for purposes other than the purpose represented by Counterparty to Beneficiary or intended or understood by Beneficiary or Guarantor; (D) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of Counterparty or any obligations by operation of law or otherwise; (E) any modification of the obligations, in any form whatsoever, including any modification made after revocation hereof to any obligations incurred prior to such revocation, and including the renewal, extension, acceleration or other change in time for payment of the obligations, or other change in the terms of the

obligations or any part thereof, including increase or decrease of the rate of interest thereon; (F) any defense based upon (i) any principles or provisions of law, statutory or otherwise which provide that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or that are or might be in conflict with the terms of this Guarantee and any legal or equitable discharge of Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that Beneficiary protect, secure, perfect or insure any Lien or any property subject thereto; (G) any defense based upon Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (H) any defense based upon notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guarantee, notices of default or early termination under the Guaranteed Contracts or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto and notices of any extension of credit to Counterparty; and (I) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guarantee;

(iv) any right to enforce any remedy which Beneficiary now has or may hereafter have against Counterparty, any other endorser or guarantor or any other person, and waives any benefit of, or any right to participate in any security whatsoever now or hereafter held by Beneficiary, and waives any rights or benefits which Guarantor might have under California Code of Civil Procedure Sections 580a and 726 (limiting the amount of any deficiency judgment to the difference between the amount of any indebtedness owed and the greater of the fair value of the security or the amount for which the security was actually sold), 580b (barring deficiencies with respect to real property purchase money obligations), and 580d (barring recovery of a deficiency judgment after real property security is sold under a power of private sale) as from time to time amended and Guarantor shall have no right of subrogation;

(v) all rights and defenses arising out of an election of remedies by the Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Counterparty by operation of Section 580d of the California Code of Civil Procedure or otherwise;

(vi) waives all rights and defenses that the Guarantor may have because the Counterparty's debt may be secured by real property, which would allow the Beneficiary to collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Counterparty and, if the Beneficiary forecloses on any real property collateral pledged by the Counterparty (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Counterparty. The waiver

contained in this Section 4.01(b)(vi) is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Counterparty's debt may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

Section 4.02. Guarantor's Understandings With Respect To Waivers.

(a) Guarantor warrants and agrees that Guarantor has had all necessary opportunity to secure any advice which Guarantor desires with respect to each of the waivers set forth above, that such waivers are made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

(b) Guarantor acknowledges that Guarantor would or might have a defense to enforcement of this Guarantee if, in the absence of an effective waiver or authorization by Guarantor, Beneficiary were to take any of the actions or exercise any of the remedies (i) that are otherwise authorized by Guarantor herein or (ii) that are described in Sections 4.01 and 4.02 and as to which Guarantor waives any defenses. Without limiting the foregoing, in the absence of an effective waiver, Beneficiary's foreclosure against real property security by power of sale under Section 580d of the California Code of Civil Procedure would destroy Guarantor's subrogation and reimbursement rights against Counterparty and would thus provide Guarantor with a defense to Beneficiary's enforcement of this Guarantee. It is Guarantor's intention in executing this Guarantee to waive all such defenses, including the defense described in the preceding sentence, in advance.

(c) Until the Guaranteed Obligations are satisfied in full, Guarantor shall withhold exercise of (a) any claim, right or remedy, direct or indirect, that Guarantor now has or may hereafter have against Counterparty or any of its assets in connection with this Guarantee or the performance by Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute (including under California Civil Code Section 2847, 2848 or 2849), under common law or otherwise and including (i) any right of subrogation, reimbursement or indemnification that Guarantor now has or may hereafter have against Counterparty, (ii) any right to enforce, or to participate in, any claim, right or remedy that Beneficiary now has or may hereafter have against Counterparty, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by Beneficiary and (b) any right of contribution Guarantor now has or may hereafter have against any other guarantor of any of the Guaranteed Obligations. Guarantor further agrees that, to the extent the agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification Guarantor may have against Counterparty or against any collateral or security, and any rights of contribution Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights Beneficiary may have against Counterparty, to all right, title and interest Beneficiary may have in any such collateral or security, and to any right Beneficiary may have against such other guarantor.

(d) Notwithstanding the foregoing, all waivers in this Guarantee shall be effective only to the extent permitted by law.

Section 4.03. Beneficiary's Rights With Respect To Guarantor's Property. In addition to all liens upon, and rights of setoff against the moneys, securities or other property of Guarantor given to Beneficiary by law, Beneficiary shall have a lien upon and a right of setoff against all moneys, securities or other property of Guarantor now or hereafter in possession of or on deposit with Beneficiary, whether held in a general or special account or deposit, or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise such right to setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by any instrument in writing executed by Beneficiary.

Section 4.04. Subordination of Counterparty's Debts to Guarantor. Any obligation of Counterparty now or hereafter held by Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such obligation of Counterparty to Guarantor collected or received by Guarantor after a default or early termination event has occurred and is continuing, and any amount paid to Guarantor on account of any subrogation, reimbursement, indemnification or contribution rights referred to in the preceding paragraph when all Guaranteed Obligations have not been paid in full, shall be held in trust for Beneficiary and shall forthwith be paid over to Beneficiary to be credited and applied against the Guaranteed Obligations. Such obligation of Counterparty to Guarantor is assigned to Beneficiary as security for this Guarantee and the obligation and, if Beneficiary requests, shall be collected and received by Guarantor, as trustee for Beneficiary and paid over to Beneficiary on account of the obligation of Counterparty to Beneficiary but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guarantee. Any such notes now or hereafter evidencing such obligation of Counterparty to Guarantor shall be marked with a legend that the same are subject to this Guarantee, and, if Beneficiary so requests, shall be delivered to Beneficiary. Guarantor will, and Beneficiary is hereby authorized, in the name of Guarantor from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Beneficiary deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

Section 4.05 Waiver of Authentication of Validity of Certain Acts. Where any one or more of Counterparties are corporations, partnerships, or limited liability companies it is not necessary for Beneficiary to inquire into the power of Counterparties or the officers, directors, partners, managers, members or agents acting or purporting to act in their behalf, and any obligations made or created in reliance upon the professed exercise of such power shall be guaranteed hereunder.

Section 4.06. Authorizations To Beneficiary. Guarantor authorizes Beneficiary, without notice or demand and without affecting its liability hereunder, from time to time to (a) renew, extend, accelerate or otherwise change the time for payment or performance of, or otherwise change the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security for the payment or performance of this Guarantee or

the obligations guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof, including a non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Beneficiary in its discretion may determine; and (d) release or substitute any one or more of the endorsers or guarantors of any obligations. Beneficiary may, upon notice, assign this Guarantee to any permitted successor of Beneficiary under the Guaranteed Contract.

ARTICLE FIVE

5.01. Miscellaneous.

(a) All notices and other communications between the Guarantor and the Beneficiary provided for in this Guarantee shall be in writing, including facsimile, and delivered or transmitted to the addresses set forth below, or to such other address as shall be designated by the Guarantor in written notice to the other party.

If to the Guarantor:

[Guarantor Name]

[Guarantor Address]

Attn: Chief Financial Officer

Telephone:

Facsimile:

If to the Beneficiary:

City of Riverside

[ADDRESS]

Telephone:

Facsimile:

(b) This Guarantee was made and entered into in the County of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. All litigation arising out of, or relating to this Guarantee, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Guarantor hereby irrevocably agrees to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

(c) The provisions of this Guarantor may be waived or amended only in writing signed by both the Guarantor and Beneficiary. This Guarantee shall bind and inure to the benefit of the Guarantor and the Beneficiary and their respective successors and permitted assigns, including without limitation, the trustee, but neither party may assign its rights under this Guarantee without the prior written consent of the other party. The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without prior written consent of the Beneficiary, and any purported assignment or delegation absent such consent is void.

(d) The rights, powers and remedies given to Beneficiary by this Guarantee are cumulative and shall be in addition to and independent of all rights, powers and remedies given to Beneficiary by virtue of any statute or rule of law or in the Guaranteed Contracts or any agreement between Guarantor and Beneficiary or between Counterparty and Beneficiary. Any forbearance or failure to exercise, and any delay by Beneficiary in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

(e) Guarantor hereby agrees that in any dispute relating to this Guarantee, each party shall be responsible for its own attorneys' fees and costs. Each of Guarantor and Beneficiary was represented by its respective legal counsel during the negotiation and execution of this Guarantee.

Executed as of the date first above written.

[GUARANTOR]

By: _____

Name: _____

Title: _____

**APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC
QUALITY ASSURANCE PROGRAM**

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APPENDIX I
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

MILESTONE SCHEDULES

NEMA Site MILESTONE SCHEDULE

| No. | Guaranteed Date | Milestone Description | Daily Liquidated Damages for Delay (\$) ** | Security Deposit at Milestone Achievement |
|-----|----------------------------------|---|--|---|
| 1. | 10 days following Effective Date | Each Initial Development Milestone as set forth in Section 2.1(a) of this Agreement | \$0 | \$187,500* |
| 2. | 30 days following Effective Date | Each Initial Development Milestone as set forth in Section 2.1(b) of this Agreement | \$0 | \$187,500* |
| 3. | 12/19/2016 | Finalize Contract Capacity and Design and update Appendix J and Appendix K | \$0 | \$187,500* |
| 4. | 5/29/2017 | Start of Construction for a NEMA Site | \$1,500 | \$187,500* |
| 5. | 11/7/2017 | Guaranteed Commercial Operation Date for a NEMA Site | \$1,500 | \$225,000 |

RES-BCT Site MILESTONE SCHEDULE

| No. | Guaranteed Date | Milestone Description | Daily Liquidated Damages for Delay (\$) ** | Security Deposit at Milestone Achievement |
|-----|----------------------------------|---|--|---|
| 1. | 10 days following Effective Date | Each Initial Development Milestone as set forth in Section 2.1(a) of this Agreement | \$0 | \$187,500* |
| 2. | 30 days following Effective Date | Each Initial Development Milestone as set forth in Section 2.1(b) of this Agreement | \$0 | \$187,500* |
| 3. | 12/19/2016 | Finalize Contract Capacity and Design and update Appendix J and Appendix K | \$0 | \$187,500* |
| 4. | 5/29/2017 | Start of Construction for a RES-BCT Site | \$3,500 | \$187,500* |
| 5. | 12/31/2017 | Guaranteed Commercial Operation Date for a RES-BCT Site | \$3,500 | \$225,000 |

| | | | | | | | | | |
|----|----------|---|---|-----------|----|-----------|--|---|-----------|
| 6. | 1/7/2018 | Outside Commercial Operation Date for a NEMA Site | Termination Right by Buyer Persuant to Section 2.4(e) | \$225,000 | 6. | 3/26/2018 | Outside Commercial Operation Date for a RES-BCT Site | Termination Right by Buyer Persuant to Section 2.4(f) | \$225,000 |
|----|----------|---|---|-----------|----|-----------|--|---|-----------|

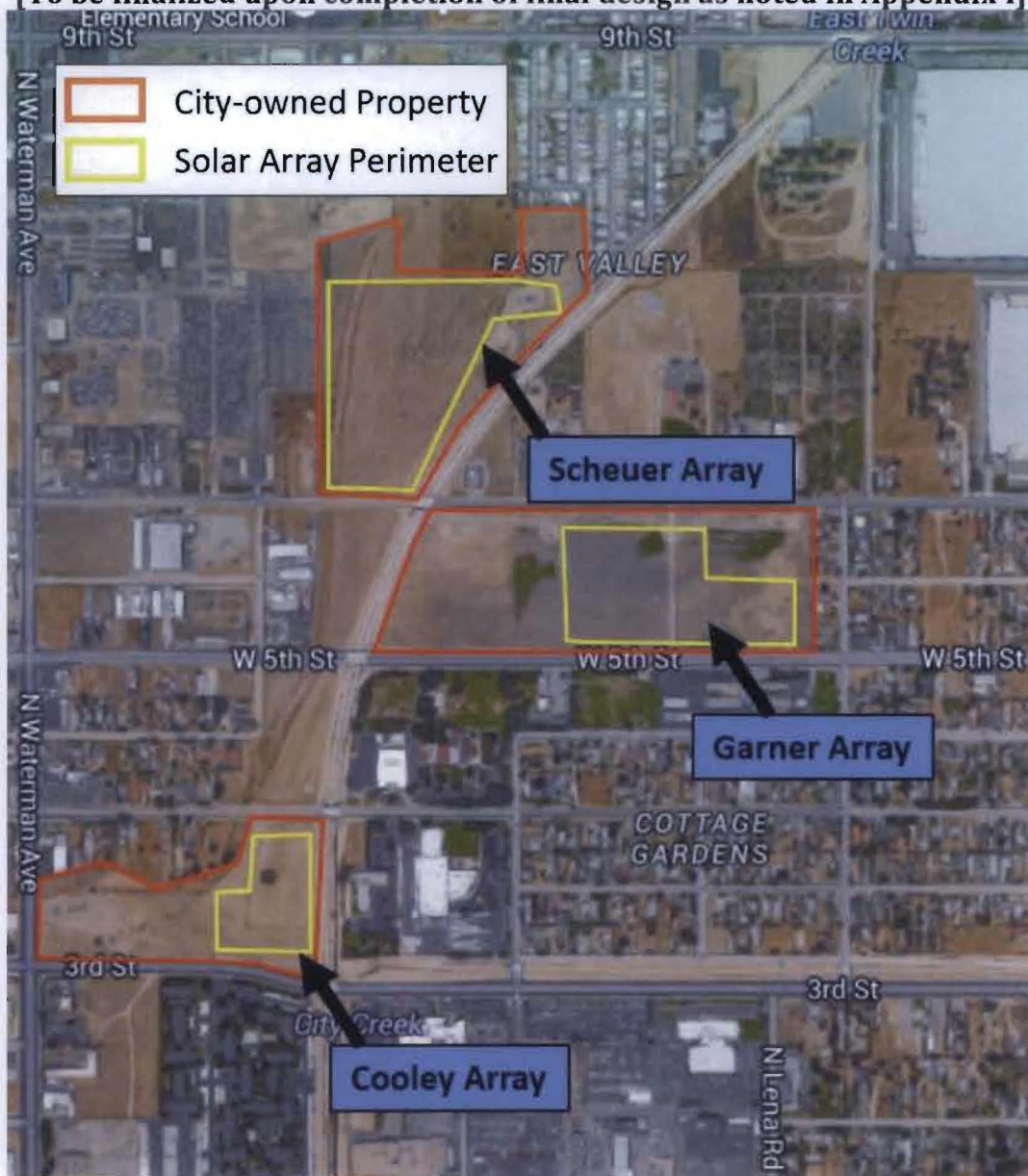
*Seller has the obligation to replenish the Development Security Account upon drawing to maintain a total of \$187,500 for each schedule per section 5.9 (a).

** Seller shall pay Daily Liquidated Damages for each missed Milestone cumulatively until such milestone is completed, the Delay Liquidated Damages cap is reached pursuant to Section 3.6(b), or this Agreement is terminated with respect to such Site.

APPENDIX J
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

SITE LOCATIONS AND ACCOUNTS

[To be finalized upon completion of final design as noted in Appendix I]



| | Garner | | Garvey | Scheuer | TOTAL |
|---|---|--|---------------------------|--|-------------------|
| Mounting Structure | Single Axis Tracker | | Single Axis Tracker | Single Axis Tracker | |
| SCE Tariff Program | NEMA | | NEMA | RES-BCT | |
| DC Size | 1,044.0 kW | | 522.0 kW | 3,758.4 kW | 5,324.4 kW |
| Inverter AC Size | 960.0 kW | | 480.0 kW | 3,000.0 kW | 4,440 kW |
| PV Module | SunPower 435 Watt 20.4% Efficiency High Purity Monocrystalline (CEC ID: SPR-E20-435NE-WHT-D) | | | | |
| Total Modules | 2,400 | | 1,200 | 8,640 | 12,240 |
| Inverter Model | SMA Sunny Tripower 24.0KW | | SMA Sunny Tripower 24.0KW | SMA Sunny Central 750CP-US | |
| Inverter Size (kW-AC) | 24.0 | | 24.0 | 750.0 | |
| Total Inverters | 40 | | 20 | 4 | 64 |
| Service Account/Meter Connected To | 712883 / 259000-071080 | | 22425596 / 259000-071006 | 31617386 / V349N-012965 | |
| Service Accounts Offset | 667883, 712883, 959280, 31551531, 11417177, 10390430 | | 1304830, 22425596, 633782 | Remaining Eligible SCE Service Accounts ³ | |
| Pre-Solar Tariff | TOU-PA-2-B | | TOU-PA-2-B | TOU-PA-2-B | |
| Post-Solar Tariff | TOU-GS-2-R | | TOU-GS-2-R | TOU-GS-3-A +Schedule S | |
| 1st Year Energy Yield (kWh/kW-DC) | 2267.9 | | 2322.6 | 2253.7 | 2263.1 |
| 1st Year Total | 2,131,686 | | 1,212,382 | 8,470,291 | 11,814,359 |

³ Expected service accounts offset by RES-BCT Project: 615996, 794811, 1304822, 1304823, 1304831, 1304834, 1304849, 2027066, 12869639, 17220018, 25940891, 26269780, 26396415, 26428424, 30469694, 31211632, 31238154, 31617386, 33990491. Other accounts may become available.

APPENDIX K
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

ANNUAL CONTRACT QUANTITY

[To be finalized upon completion of final design as noted in Appendix I]

| Contract Year | Expected Annual Contract Quantity, kWh | Minimum Contract Quantity, kWh |
|----------------------|---|---------------------------------------|
| Stub Period | 1,599,274 | 1,359,383 |
| 1 | 11,814,359 | 10,042,205 |
| 2 | 11,784,823 | 10,017,100 |
| 3 | 11,755,361 | 9,992,057 |
| 4 | 11,725,973 | 9,967,077 |
| 5 | 11,696,658 | 9,942,159 |
| 6 | 11,667,416 | 9,917,304 |
| 7 | 11,638,248 | 9,892,510 |
| 8 | 11,609,152 | 9,867,779 |
| 9 | 11,580,129 | 9,843,110 |
| 10 | 11,551,179 | 9,818,502 |
| 11 | 11,522,301 | 9,793,956 |
| 12 | 11,493,495 | 9,769,471 |
| 13 | 11,464,761 | 9,745,047 |
| 14 | 11,436,099 | 9,720,684 |
| 15 | 11,407,509 | 9,696,382 |
| 16 | 11,378,990 | 9,672,142 |
| 17 | 11,350,543 | 9,647,962 |
| 18 | 11,322,167 | 9,623,841 |
| 19 | 11,293,861 | 9,599,781 |
| 20 | 11,265,626 | 9,575,782 |
| 21 | 11,237,462 | 9,551,843 |
| 22 | 11,209,369 | 9,527,963 |
| 23 | 11,181,345 | 9,504,144 |
| 24 | 11,153,392 | 9,480,383 |
| 25 | 11,125,508 | 9,456,681 |

APPENDIX L
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

MARKET REPLACEMENT COST

| Contract Year | Contract Price (\$/kWh) | Projected Bundled Retail Rate (\$/kWh) | Market Replacement Cost (\$/kWh) |
|----------------------|--------------------------------|---|---|
| Stub Period | 0.05775 | 0.1251 | 0.06735 |
| 1 | 0.05775 | 0.1251 | 0.06735 |
| 2 | 0.05948 | 0.1301 | 0.07062 |
| 3 | 0.06127 | 0.1353 | 0.07404 |
| 4 | 0.06310 | 0.1407 | 0.07762 |
| 5 | 0.06500 | 0.1463 | 0.08135 |
| 6 | 0.06695 | 0.1522 | 0.08526 |
| 7 | 0.06896 | 0.1583 | 0.08933 |
| 8 | 0.07103 | 0.1646 | 0.09360 |
| 9 | 0.07316 | 0.1712 | 0.09805 |
| 10 | 0.07535 | 0.1781 | 0.10271 |
| 11 | 0.07761 | 0.1852 | 0.10757 |
| 12 | 0.07994 | 0.1926 | 0.11265 |
| 13 | 0.08234 | 0.2003 | 0.11795 |
| 14 | 0.08481 | 0.2083 | 0.12349 |
| 15 | 0.08735 | 0.2166 | 0.12928 |
| 16 | 0.08997 | 0.2253 | 0.13533 |
| 17 | 0.09267 | 0.2343 | 0.14164 |
| 18 | 0.09545 | 0.2437 | 0.14823 |
| 19 | 0.09832 | 0.2534 | 0.15511 |
| 20 | 0.10126 | 0.2636 | 0.16230 |
| 21 | 0.10430 | 0.2741 | 0.16981 |
| 22 | 0.10743 | 0.2851 | 0.17764 |
| 23 | 0.11065 | 0.2965 | 0.18582 |
| 24 | 0.11397 | 0.3083 | 0.19436 |
| 25 | 0.11739 | 0.3207 | 0.20328 |

APPENDIX M
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

PERMITS

| Permit or Approval - Type or Description | Grantor/s, and/or Reviewer/s |
|---|---|
| Secure CEQA (IS/MND) Requirement Compliance, as required | Engineer of Record, SBCEP, RPU |
| Storm water Pollution Prevention Plan | SBPW, RWQCB, Flood Control District |
| Flood Control District Permit | San Bernardino County Flood Control District |
| Project Permit to Construct | SBPW, RWQCB, Cal Recycle/LEA, San Bernardino County Building & Safety |
| Facility Construction, Electrical, Fire, and Building Permits | San Bernardino County, Various Departments |
| All other permits or approvals required for the construction, operation, or maintenance of the Facility | Applicable agencies |

APPENDIX N
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

COMMERCIAL OPERATIONS PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 2017 (“Agreement”) by and between City of Riverside (“Buyer”) and Solar Star California XXXIX, LLC (“Seller”), in order determine achievement of the Commercial Operation Date, Seller shall demonstrate to Buyer that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement by:

- A. Delivery of a Certificate of Commercial Operations, in the form attached hereto (the “Certificate”), from a Professional Engineer, licensed in the State of California, regarding the Facility’s ability to deliver Facility Energy, including the items below. Any term used but not defined in the Certificate shall have the meaning set forth in the Agreement. The Certificate shall be submitted by Seller, along with reasonable documentation as may be requested by Buyer, and certify as to the following:
- 1) All solar panels have been installed in accordance with the manufacturer’s specifications (“Solar Panel Mechanical Completion”).
 - 2) The electrical collection system related to the solar panels referenced in (1) above is complete, functional, and energized for the Facility.
 - 3) Seller’s collector substation is complete and capable of delivering an as-available product.
 - 4) A statement signed by the manufacturer of the solar panels referenced in (1) above that solar panel commissioning is complete (which shall occur when the electrical and control systems have been energized and tested in accordance with the manufacturer’s specifications and the solar panels are released for electrical generation of power (“Solar Panel Commissioning Completion”) has been received.
 - 5) The Facility is operational and interconnected with the Point of Interconnection and capable of delivering the Facility Energy.
- B. Delivery of evidence demonstrating, to the reasonable satisfaction of Buyer, that all of the following have occurred:

- 1) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility possesses all of the characteristics, and satisfies all of the Requirements set forth for the Facility in the Agreement.
- 2) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law (including any applicable SCE rules or protocols) to be completed prior to full commercial operations. **Testing shall include but not be limited to operating the Facility for a period of not less than ten (10) consecutive days and delivering Facility Energy during such period to the Point of Interconnection up to the Contract Capacity in accordance with the requirements of this Agreement.** The Facility shall demonstrate it has delivered the full Contract Capacity and the Facility Energy to the Point of Interconnection at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar solar profiles during such period.
- 3) Seller has obtained all of the Permits required for the operation and maintenance of the Facility identified in Appendix M (including the CEQA Determinations), and all such Permits are final and non-appealable.
- 4) Seller has obtained the Insurance.
- 5) Seller shall have entered into an agreement providing for the operation and maintenance of the Facility with an Affiliate of SunPower or an operator that is satisfactory to Buyer.
- 6) Buyer has received the Delivery Term Security in a form reasonably acceptable to Buyer.

Upon reasonable notice and during regular business hours, Buyer's representative(s) may inspect the Facility and observe the testing associated with achievement of Commercial Operation, *provided* that such representative(s) of Buyer shall at all times comply with Seller's instructions regarding safety and security while on the Facility Site. Seller shall provide Buyer's representative(s) with a written copy and/or video training regarding Seller's on-site safety and security policies.

FORM OF CERTIFICATION

The undersigned, Solar Star California XXXIX, LLC (“Seller”), and [_____] (“Professional Engineer”) do hereby deliver this Certificate of Commercial Operations (complete except for countersignature) to the City of Riverside (“Buyer”). Any capitalized terms used but not defined herein shall have the meaning set forth in the Power Purchase Agreement dated _____, 2017 between Seller and Buyer (the “Agreement”). In accordance with its obligation to certify to Buyer’s satisfaction that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement, Seller and the Professional Engineer hereby certify and represent to Buyer that the following statements are true as of the date set forth below:

- a. The Facility has achieved the following:
 - 1. Solar Panel Mechanical Completion, as defined in Appendix N of the Agreement; and
 - 2. Solar Panel Commissioning Completion, if available, as defined in Appendix N of the Agreement.
- b. The Facility is complete as follows:
 - 1. The electrical collection system related to the solar panels that have achieved Solar Panel Mechanical Completion is complete, functional, and energized; and
 - 2. The collector substation is complete and capable of operations.
- c. The Facility is operational and interconnected with the Point of Interconnection, and is capable of delivering Facility Energy.

EXECUTED this ____ day of _____, 20 ____.

SELLER: Solar Star California XXXIX, LLC

By: _____
Name: _____
Title: _____

PROFESSIONAL ENGINEER

By: _____
Name: _____
Title: _____

RECEIVED AND ACCEPTED this _____ day of _____, 20 ____.

BUYER: City of Riverside

By: _____

Name: _____

Title: _____

APPENDIX O
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2017
BETWEEN
CITY OF RIVERSIDE
AND SOLAR STAR CALIFORNIA XXXIX, LLC

SITE USE CONDITIONS

To ensure that Buyer, as owner of the San Bernardino Wells (each a “Site” and collectively the “Sites”), Seller will abide by the following requirements and conditions for the duration of the Power Purchase Agreement between Solar Star California XXXIX, LLC and City of Riverside:

1. Sites

- a. Garner Site: As defined in Appendix J.
- b. Cooley Site: As defined in Appendix J.
- c. Scheuer Site: As defined in Appendix J.

2. Site Security

- a. For the duration of this Agreement, Seller will lock Site gates at all times to maintain the integrity of Site security and to discourage access by unauthorized persons and vehicles, including the posting of “no trespassing” and “high voltage” warning signs where necessary or required by any safety regulations.
- b. On the Project Commercial Operation Date and thereafter for the duration of this Agreement, Buyer will bear all responsibilities and costs necessary to maintain and repair the perimeter fence, except for any costs related to repairs to fix damage to the perimeter fence that was caused by the negligence or willful misconduct of Seller.
- c. For the duration of this Agreement, Buyer will not be liable for any material or financial losses to Seller due to theft, vandalism or damage of Project equipment caused by unauthorized persons, unless such loss was caused by the direct negligence or willful misconduct of Buyer.

3. Site Access and Maintenance

- a. Buyer and its contractors shall have unlimited access to the Sites as needed for ongoing operations and maintenance activities including, but not limited to, well tuning, groundwater monitoring, drainage maintenance and repair, and mowing outside the fenced perimeter of the Site.
- b. Buyer and its contractors will be liable for any damage to the Project resulting from operation and maintenance activities including, but not limited to, well tuning, groundwater monitoring, drainage maintenance and repair, and mowing outside the fenced perimeter of the Site.
- c. In the development, construction and operation of the Project, the Seller shall in no way impede or prevent access to any facilities, such as wells, pipelines, and appurtenances, and groundwater monitoring wells as needed for ongoing operation and maintenance of the Site.
- d. Vegetation within the Project area shall be cleared via mowing, or hand methods by Seller at no cost to the Buyer. Resulting debris shall be removed from the Site and cleared from all structures within the Project area. Buyer will provide Seller with vegetation maintenance schedule, to which Seller will execute maintenance within fourteen (14) calendar days of scheduled maintenance dates. Should the Buyer be required to perform vegetation maintenance to the Project area due to Seller's failure to perform said maintenance within fourteen (14) calendar days of scheduled maintenance date, Seller will reimburse Buyer for all costs associated with said maintenance.

4. Emergencies and Priorities

- a. Should the Project conflict with an area requiring emergency maintenance by Buyer or its contractors, Seller shall temporarily relocate the interfering portions of the Project to facilitate repairs. If the emergency maintenance is required because of Seller's acts or omissions, then Seller will be responsible for all costs associated with temporarily relocating the interfering portions of the Project; otherwise, Buyer will be responsible for all costs associated with temporarily relocating the interfering portions of the Project. In all circumstances, Seller will cooperate with Buyer to ensure that the interfering portions of the Project are located according to the timelines or deadlines imposed by any applicable government or regulatory authority; and, if no timelines or deadlines have been imposed, Seller will relocate the interfering portions of the Project within twenty (20) calendar days after being

notified by Buyer or a representative of Buyer's Public Utilities Department. The Buyer's Public Utilities Department shall determine what constitutes an emergency, and repair of the Site's infrastructure shall take priority. If Buyer requests that Seller reduce or curtail the Facility Energy, or any portion of the Facility Energy, to permit Buyer to perform any operations or maintenance activities, including emergency maintenance, such request will constitute a Buyer-Issued Curtailment Order, and Buyer's obligations described in Section 7.3 will apply.

5. Right of Entry

- a. All personnel that are not City of Riverside employees or Riverside Public Utilities Department contractors must have an executed Right of Entry Agreement in place before entering or working on the Project area.

6. Other Seller Site Use Obligations

- a. Prior to completion of the design, Seller shall provide Buyer a layout of the proposed sites including Temporary Construction Easements and proposed ingress and egress routes. Seller's design shall consider the operation and maintenance of existing and foreseeable future facilities. Buyer retains the right to determine the final location of the solar sites, but will not unduly withhold approval.
- b. For the duration of the Site License, as defined in Section 12.1(f), Seller will not do, or refrain from doing, anything that would cause the imposition of any Liens or encumbrances, other than Permitted Liens, on the real property of the Site. Seller must immediately notify Buyer of any Liens or encumbrances that are imposed on the real property of the Site and must take immediate action to release such Lien or encumbrance or cause such Lien or encumbrance to become a Permitted Lien.
- c. Seller must submit any plans affecting the Sites to Buyer for reasonable approval before any construction or site changes can be made.