

SAVINGS GUARANTEE AGREEMENT

Between

SunPower Corporation, Systems

And

Contra Costa County

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SAVINGS GUARANTEE AGREEMENT

THIS SAVINGS GUARANTEE AGREEMENT (“Agreement”) dated June 18, 2019 (“Effective Date”), is entered into by and between SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation (“SunPower”), with its principal place of business at 1414 Harbour Way South, Richmond, California 94804, and Contra Costa County, a political subdivision of the State of California (“Customer”), with its principal place of business at 40 Muir Road, Martinez, CA 94553. In this Agreement, SunPower and Customer are referred to individually as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, SunPower’s affiliate, Solar Star Co Co 1, LLC, a Delaware limited liability company (“Provider”), has separately entered into a Power Purchase Agreement , dated June 18, 2019 with Customer (the “Purchase Agreement”) pursuant to which Customer will purchase from Provider the Solar Services from the PV System and the Storage Services from the ESS identified on Exhibit A (Site Information, PV System & ESS) attached hereto and incorporated herein at the site identified on Exhibit A (the “Site”);

WHEREAS, SunPower and Customer desire to enter into an agreement pursuant to which SunPower guarantees that the System will provide the Guaranteed Savings.

WHEREAS, capitalized terms not otherwise defined in this Agreement shall have the meanings given such terms in the Purchase Agreement;

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

ARTICLE I. DEFINED TERMS

Section 1.01 Defined Terms.

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

Actual Savings has the meaning set forth in Section 2.03.

Baseline Average Energy Spread shall be the amount set forth in Exhibit A.

Baseline Demand Charges shall mean the annual sum of demand charges paid by Customer at the Site before the installation of the System as set forth in Exhibit A.

Billing Cycle means the period, typically monthly, during which the Utility assesses an electricity bill, including demand charges, at the Site.

Billing Cycle Guaranteed Savings shall have the meaning set forth in Section 2.01.

Billing Schedule shall mean the dates of (a) the Billing Cycles set by the Utility for the Site and (b) the schedule of the exact days of the year which shall be considered holidays by the utility for billing purposes

Current Average Energy Spread shall, for any Guarantee Year, be the weighted average difference between on and off peak energy rates in the Utility Tariff in effect during the then-current Guarantee Year, as calculated based on the table set forth in Exhibit B.

Data Acquisition System or DAS means Provider's system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on Provider's DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the PV System (in kWh), actual AC electricity charge and discharge of the ESS (in kWh), and actual AC electricity import and export from the grid by the Site (in kWh)

Exclusion Event means:

- A Force Majeure Event;
- Any temporary or permanent quarantines, blockades, rules or regulations, enacted or imposed by governmental authorities causing any disruption to System energy generation or impedance to a Party's Site access;
- Changes in any law, ordinance, or regulation relating specifically to the design, construction, installation, interconnection or operation of the System which law is effective after the date of this Agreement that materially and adversely affects the ability of a Party to perform its obligations under this Agreement or under the Purchase Agreement;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Loss of telecommunications service to the System for a period exceeding seventy-two (72) hours
- Any curtailment or operation of the System ordered or ordered by the Utility
- Externally caused outages of the System, including outages caused by:
 - a fluctuation in the Utility network parameters (e.g., a frequency or voltage variation) that disconnect the inverters or System from the utility network and prevented energy from being evacuated from the System
 - caused by a manufacturer of any third-party equipment's inability or unwillingness to honor its product warranty to SunPower for the replacement of parts, despite SunPower's commercially reasonable and good faith efforts to enforce such product warranty
 - a failure or outage in the Utility distribution network that prevents energy from being evacuated from the System
 - Disconnection of power or communication lines connected to the System, or activation of the Emergency Stop Button on the System, by anyone other than SunPower or SunPower's representatives, or the Customer or Customer

representatives acting at the explicit direction of SunPower or SunPower’s representatives

- or executed at the request of the Customer

Guaranteed Demand Savings shall be the amount set forth in Section 2.01.

Guaranteed Energy Savings shall be the amount set forth in Section 2.01.

Guaranteed Savings shall be the amount set forth in Section 2.01

Guarantee Year shall have the meaning set forth in Section 2.01.

In Compliance Letter shall have the meaning set forth in Section 3.03.

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

Noncompliance Period shall have the meaning set forth in Section 3.03.

On-Peak Period shall be the period set forth in Exhibit A

Out of Compliance Letter shall have the meaning set forth in Section 3.03.

Purchase Agreement has the meaning set forth in the recitals.

Savings Guarantee Payment has the meaning set forth in Section 2.04.

Savings Guarantee Term shall have the meaning set forth in Section 2.02.

Site means the site identified in Exhibit A.

Utility means the electric distribution company providing electrical service to the Site.

Utility Tariff means the tariff under which the Utility provides electrical service to the Site, which is the tariff as set forth in Exhibit A as of the Effective Date.

Utility Tariff Restructuring means a material change in the structure of the Utility Tariff. Such changes may include, but are not limited to: changes to time of use periods; the introduction of maximum demand charges, minimum demand charges or “ratchets”; changes to Net Energy Metering affecting System eligibility or energy export valuation; changes to minimum bills or portions of bills; or the elimination of demand charges.

ARTICLE II. SAVINGS GUARANTEE

Section 2.01 Savings Guarantee

During the first twelve (12) complete Billing Cycles following the Storage Services Commencement Date, and for each set of twelve (12) complete Billing Cycles thereafter during the Savings Guarantee Term (each such period, a “Guarantee Year”), SunPower guarantees (the “Savings Guarantee”) to Customer that the Actual Savings will be greater than or equal to the Guaranteed Savings, comprised of both the Guaranteed Demand Savings and the Guaranteed Energy Savings, set forth in the table below.

Guaranteed Demand Savings: \$16,453

Guaranteed Energy Savings:	\$13,338
Guaranteed Savings	\$29,791

Exhibit B provides the expected Guaranteed Savings for each Billing Cycle in a Guarantee Year at the Site (for each month, the “Billing Cycle Guaranteed Savings”).

Section 2.02 Savings Guarantee Term

The savings guarantee term shall commence on the Storage Services Commencement Date and terminate on the earlier to occur of (a) the end of the fifteenth (15th) Guarantee Year following the Storage Services Commencement Date, or (b) the termination of the Purchase Agreement (the “Savings Guarantee Term”).

Section 2.03 Calculation of Actual Savings

During each Billing Cycle in each Guarantee Year during the Savings Guarantee Term, SunPower will calculate the following amounts:

a) Demand Charge Savings

- 1) “Gross Demand Charges” which shall be equal to the demand charges that would have been assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by Consumption Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the ESS Meter, plus (c) the PV System’s generation as measured by the PV Meter;
- 2) “Net Demand Charges” which shall be equal to the demand charges assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage measured by Net Load Meter; and
- 3) “Annual Demand Savings” which shall be equal to the sum, for all Billings Cycles in a Guarantee Year, of the difference between the Gross Demand Charges and the Net Demand Charges for each Billing Cycle in that Guarantee Year.

b) ESS Energy Savings

- 1) The “Post-PV Energy Charges” which shall be equal to the energy charges that would have been assessed at the Site based on energy prices in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by the Net Load Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the Storage Meter;
- 2) The “Net Energy Charges” which shall be equal to the energy charges assessed at the Site based on the energy charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage measured by the Net Load Meter; and

- 3) The “Actual ESS Energy Savings” which shall be equal to the sum, for all Billing Cycles in a Guarantee Year, of the difference between the Post-PV Energy Charges and the Net Energy Charges.
- c) **Actual Savings.** The “Actual Savings”, which shall be equal to the sum of the Annual Demand Savings and the Actual ESS Energy Savings for each Guarantee Year.

Section 2.04 Savings Guarantee Payment

- a) If in any Guarantee Year, the Actual Savings are less than the Guaranteed Savings, SunPower shall pay Customer an amount equal to the Guaranteed Savings minus the Actual Savings (the “Savings Guarantee Payment”) *provided that* the total Savings Guarantee Payment in any Guarantee Year shall not exceed the Storage Services Fees paid by Customer under the Purchase Agreement in that Guarantee Year.
- b) If the Actual Savings for any Guarantee Year is greater than the Guaranteed Savings (an “Excess Savings Amount”), the Excess Savings Amount shall be credited towards calculation of the Actual Savings in the subsequent Guarantee Year.
- c) SunPower shall pay Customer the Savings Guarantee Payment, if any is payable, , no later than 60 days after the end of the applicable Guarantee Year.

Section 2.05 Utility Billing Period

The Actual Savings will be based on the Billing Cycle at the Site, provided that Customer will (a) notify SunPower of the Billing Cycle at the Site when the ESS is installed, and (b) notify SunPower of any changes to the Billing Cycle. If Customer fails to notify SunPower of changes to the Billing Cycle at the Site, the Actual Savings calculations performed will be based on the last Billing Cycle available to SunPower.

Section 2.06 Savings Guarantee Adjustments.

The Parties agree that the Savings Guarantee shall be adjusted in the following circumstances as described below.

- a) If, in any Guarantee Year, the total Gross Demand Charges in that Guarantee Year are less than 85% of the Baseline Demand Charges, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed Demand Savings, times, (2) a fraction equal to (i) the Gross Demand Charges observed in that Guarantee Year, divided by (ii) Baseline Demand Charges.
- b) If in any Guarantee Year, the Current Average Energy Spread is less than 85% of the Baseline Average Energy Spread, then the Annual Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed Energy Savings, times, (2) a fraction equal to (i) the Current Average Energy Spread observed in that Guarantee Year, divided by (ii) Baseline Average Energy Spread.
- c) If an Exclusion Event occurs, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be the Guaranteed Savings

minus the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which the Exclusion Event(s) occurs.

- d) If Customer or any person other than SunPower or a subcontractor specifically approved by SunPower repairs, modifies or alters the System, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which the unapproved repair, modification or alteration impairs the performance of the System.
- e) If (a) the Utility Tariff under which the Site receives electrical service from the Utility ceases to be the tariff set forth in Exhibit A hereto, (b) a Utility Tariff Restructuring occurs, or (c) the Parties agree to move the PV System or ESS from the Site to another location, the Parties will negotiate in good faith an adjustment to the Guaranteed Savings, provided that SunPower shall not owe Customer any Savings Guarantee Payment in a Guarantee Year to the extent such payment is owed due to the Utility Tariff at the Site ceasing to be the tariff identified in Exhibit A, a Utility Tariff Restructuring or the PV System or ESS being removed from the Site.
- f) The Parties acknowledge and agree that the Guaranteed Savings as set forth in this Agreement are subject to change by SunPower prior to the Storage Services Commencement Date in the event that the PV System or ESS as constructed and installed differs from the initial PV System or ESS designed and specified in the Purchase Agreement.

Sample calculations of the adjustments set forth in Section 2.06 (a) and (b) are provided in Exhibit C, and a sample calculation of the adjustments set forth in Section 2.06 (d) and (e) is provided in Exhibit D.

ARTICLE III. CUSTOMER RESPONSIBILITIES

Section 3.01 Designated Contacts.

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

Primary Contact:

Name: Frank V. Di Massa
Work Phone: (925) 957-2473
Cell Phone: (925) 374-2491
Mailing address: 40 Muir Road, Martinez, CA 94553
Fax: (925) 228-2437
Email: Frank.DiMassa@pw.cccounty.us

Secondary Contact:

Name: Ramesh Kanzaria
Work Phone: (925) 957-2468
Mailing address: (925) 383-2596
Fax: (925) 228-2437
Email: Ramesh.Kanzaria@pw.cccounty.us

Section 3.02 Customer Responsibilities.

Throughout the Savings Guarantee Term Customer shall:

- (a) not impair SunPower’s ability to maintain the System and allow repairs in a timely fashion as may be recommended from time to time by SunPower;
- (b) not be in breach of (i) Customer’s obligation to pay Provider for the Solar Services and Storage Services pursuant to the Purchase Agreement and (ii) any Customer obligations pursuant to the Purchase Agreement that directly (A) hinder the amount of Energy or the Storage Services delivered by the System or (B) degrade the functionality of the System.
- (c) grant reasonable access to the System by SunPower personnel and representatives;
- (d) ensure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications;
- (e) ensure any selected demolition agreed to by the Parties prior to construction of the System has been completed and that external shading on the PV System does not increase over the Savings Guarantee Term;
- (f) not modify, alter, damage, service, or repair, without SunPower’s prior written approval, any part of the System, the supporting structure for the System (including building roof, if applicable), or the associated wiring;
- (g) notify SunPower within 30 days if the Utility Tariff ceases to be the tariff set forth in Exhibit A, and
- (h) notify SunPower of changes to the Billing Cycle , at least on an annual basis before December 15th of each calendar year.

Section 3.03 Customer’s Failure to Uphold Responsibilities.

SunPower shall promptly notify Customer of any failures to perform an obligation under this Agreement (“Out of Compliance Letter”). Upon Customer’s cure of all failures described in an Out of Compliance Letter, SunPower will notify Customer (“In Compliance Letter”) that Customer is complying with Customer’s Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a “Noncompliance Period”), SunPower shall have no liability under this Agreement. For any Guarantee Year in which there is a Noncompliance Period, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which there is a Noncompliance Period.

ARTICLE IV. MISCELLANEOUS PROVISIONS.

Section 4.01 Limitation of Liability.

Neither Party shall be liable under this Agreement for any indirect, consequential or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of use of any equipment or facilities. In no event shall SunPower’s liability hereunder exceed any payment obligations arising under Section 2.04.

Section 4.02 Technical Disputes.

In case of any technical dispute between the Parties in a matter related to the calculation of the Actual Savings, Customer has the right to request the appointment of a technical expert in the operation of energy storage systems (the “Expert”) for resolution of the issue. The Expert shall finally determine the technical matter at issue in accordance with the provisions of this Contract, acting as arbitrator. The Expert shall deliver its determination to the Parties in writing, including an explanation of the underlying reasons, within thirty (30) calendar days after the acceptance of the mandate. The Expert’s determination shall be final and binding upon the Parties. The costs of the determination, including fees and expenses of the Expert, shall be borne by the Party the Expert deems is in the wrong.

Section 4.03 Notices.

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

If to Customer:

Name: Frank V. Di Massa
Work Phone: (925) 957-2473
Cell Phone: (925) 374-2491
Mailing address: 40 Muir Road, Martinez, CA 94553
Fax: (925) 228-2437
Email: Frank.DiMassa@pw.cccounty.us

If to SunPower:

SunPower Corporation, Systems
2900 Esperanza Crossing, Floor 2
Austin, TX 78758
Telephone No.: (512) 493-4663
Facsimile No: (512) 857-1155
Attention: Wayne Webb

Section 4.04 Entire Agreement.

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

Section 4.05 Amendments.

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

Section 4.06 No Waiver.

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

Section 4.07 Successors and Assigns.

Except as provided herein, no party may assign this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld. Either party may assign this Agreement without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the parties. Notwithstanding anything herein to the contrary, SunPower may assign all of its rights and obligations under this Agreement to an assignee that has comparable experience in operating and maintaining photovoltaic solar and storage systems comparable to the System and providing services comparable to the solar and storage Services.

Section 4.08 Severability.

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

Section 4.09 Counterparts.

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

Section 4.10 Applicable Law.

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

Section 4.11 Interpretation.

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

Section 4.12 No Cross-Default or Right of Offset.

For the avoidance of doubt, each Party agrees that (i) this Agreement does not create any right to terminate the Purchase Agreement, (ii) any failure of either Party to perform any obligations hereunder will not create any rights to offset any amounts owed under the Purchase Agreement, and (iii) any failure of either Party to perform any obligations under the Purchase Agreement will not create any rights to offset any amounts owed hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, SunPower and Customer have executed this Agreement.

<p>SUNPOWER:</p> <p>SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation</p> <p>By: _____ Name: _____ Title: _____</p>	<p>CUSTOMER:</p> <p>Contra Costa County</p> <p>By: _____ Name: _____ Title: _____</p>
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EXHIBIT A: SITE INFORMATION, PV SYSTEM & ESS

Site Name: 1000 Ward Street

Site Address: 1000 Ward Street, Martinez, CA 94553

Estimated PV System Size: 337 kWp

Estimated ESS Size: 500 kW / 950 kWh

Utility Providing Electrical Service: Pacific Gas and Electric (PG&E)

Utility Tariff to be Effective as of the Storage Services Commencement Date: PG&E E19S Option R

Baseline Demand Charges: \$106,104

On Peak Period: 4-9pm

Baseline Average Energy Spread:

Season	Off Peak Period	Months per Year	Rate	On Peak Rate	Spread	
Summer	Off-Peak	4	\$0.1174	\$0.34403	\$0.2266	(a)
Winter	Super Off Peak	3	\$0.06384	\$ 0.14197	\$0.0781	(b)
Baseline Average Energy Spread (weighted average of a, b based on months of year in effect):					\$0.1630	

EXHIBIT B: BILLING CYCLE GUARANTEED SAVINGS

Billing Cycle¹	Billing Cycle Guaranteed Savings
January	\$1,380
February	\$1,532
March	\$2,499
April	\$2,186
May	\$1,061
June	\$5,040
July	\$4,714
August	\$4,650
September	\$4,386
October	\$1,796
November	\$727
December	\$702
Guaranteed Savings	\$30,674

¹ The months shown in the table above refer to the calendar month during which the majority of a Billing Cycle occurs. For example, a Billing Cycle covering the dates from January 3 – February 2 would correspond to the row labeled January in the table above.

EXHIBIT C: SAMPLE ADJUSTMENTS TO GUARANTEED SAVINGS UNDER SECTION 2.06 (A) AND (B)

Section 2.06 (a)

Gross Demand Charges (a)	\$80,000
Baseline Demand Charges (b)	\$106,104
Adjustment Factor $(1 - (a / b)) = (c)$	24.6%
Guaranteed Demand Savings (d)	\$18,101
Guaranteed Demand Savings Adjustment $(d * c) = (e)$	\$4,453
Guaranteed Savings (f)	\$30,674
Adjusted Guaranteed Savings (f-e)	\$26,221

Section 2.06 (b)

Baseline Average Energy Spread (a)	\$0.1630
Current Average Energy Spread (b)	\$0.12
Adjustment Factor $(a / b) = (c)$	26%
Guaranteed Energy Savings (d)	\$12,574
Guaranteed Energy Savings Adjustment $(d * c) = (e)$	\$3,269
Guaranteed Savings (f)	\$30,674
Adjusted Guaranteed Savings (f-e)	\$27,405

EXHIBIT D: SAMPLE ADJUSTMENT TO GUARANTEED SAVINGS UNDER SECTION 2.06 (B) OR (E)

Guaranteed	
Month(s) During which Exclusion Applies	May
Billing Cycle Guaranteed Savings in those months (a)	\$1,061
Annual Guaranteed Savings (b)	\$30,674
Adjusted Guaranteed Savings (a – b)	\$29,613