

EXECUTION VERSION

NOTE: 4545 Delta Fair Blvd, Antioch, CA 94509

POWER PURCHASE AGREEMENT

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC
as Provider

and

Contra Costa County
as Customer

CONFIDENTIAL

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POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

4. Operation and Maintenance of System.

4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance
2900 Esperanza Crossing, 2nd Floor
Austin, TX 78759
(510) 439 – 4663 or (800) 251-9728

Wayne.Webb@sunpowercorp.com with a copy to: customer.service@sunpower.com

4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

5. Purchase of Solar Services.

5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the “kWh Rate”) set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes (“Transfer Taxes”), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider’s failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider’s manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider’s use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider’s ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC
Attn: Commercial Asset Management Group
c/o SunPower Capital Services, LLC
2900 Esperanza Crossing
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

7. General Covenants.

7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

8. Insurance Requirements.

8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

11. Defaults.

11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

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

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

12. Remedies Following Default.

12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$1,318,009, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC
c/o SunPower Corporation
1414 Harbour Way South, Suite 1901
Richmond, CA 94804
Attention: Julie Williamson, Project Administration
Phone:510-540-0550
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.
Capital Projects Management Division
Attn: Energy Manager
40 Muir Road
Martinez, CA 94553 Phone: 925-313-2000
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

that: 14.2.1 Provider Representations. Provider hereby represents and warrants

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

warrants that: 14.2.2 Customer Representations. Customer hereby represents and

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

14.3 Assignment

14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC
Its member

By: _____
Name:
Title:

CUSTOMER:

CONTRA COSTA COUNTY

By: _____
Name: _____
Title: _____

EXHIBIT A

SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

2. PROJECT SCHEDULE:

PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

3. SCOPE OF WORK:

System Design & Scope

Design Documentation

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	Submittal Requirement	30% Design Set	90% Design Set
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

Solar Electrical Equipment and Conductors

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

Battery Energy Storage System Requirements

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

Utility Interconnection

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

Utility Requirements

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

Facility Equipment

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

Soils and Structural Foundations

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

Canopy Structure Design

Carport Canopies are at 10 degree tilt with 11 ft clear height.

Roof Conditions

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979_SunPowerEWSsystem_REP_SOL_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

Site Name	Anchor Count
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3rd party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

Drainage

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

Permits

Permit	Provider Permit	Customer Permit	Cost Allocation	Allotted Time following Application
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

Permit Allowance Schedule

Site	Allowance for Permit
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

Shading

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

Painting

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

Landscaping

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

Fencing

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

Labor

Project Labor Agreement

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

Overtime and special shift requirements

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

Prevailing Wages

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

Diversity Requirements

Provider shall comply with Contra Costa County's Construction Outreach Program.

Indirect Construction Costs

Taxes and fees

Taxes or fees, other than permit fees and sales tax, are not included.

Bonds

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

Site & Construction Conditions

Access

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

Use of Facilities

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

Special handling of site materials

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

Site utilities and hazards

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

Security and Lighting

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

Special Conditions

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

Testing and Inspections

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

Weather conditions

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

Commissioning, Monitoring, Operations & Maintenance

Commissioning

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

EXHIBIT B
FORM OF FINANCING PARTY ACKNOWLEDGMENT

[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [_____] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [_____] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");¹

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

¹ NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT, ETC.

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option**. The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

4. ADDITIONAL PROVISIONS²

(a) **Commercial Operation Date**. The Commercial Operation Date is _____.

(b) **Use of Electricity**. None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project**. The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights**. The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership**. The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments**. The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

² NTD: Additional provisions to be added to address specific matters contained in the PPA.

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[_____]
as the Customer

By: _____
Name:
Title:

[_____]
as the Provider

By: _____
Name:
Title:

[●],
as the System Lessor

By: _____
Name:
Title:

Payment Instructions

Accounts Bank	
ABA Number	[_____] ³
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

³ Account information to be confirmed and included.

EXHIBIT C

SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

ARTICLE I. ADDITIONAL DEFINED TERMS

Actual Generation means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

Annual Deficit has the meaning set forth in Section 3.01.

Annual System Performance Report means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

Avoided Energy Price per kWh means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

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 System (in kWh) and solar irradiance (in W/m²).

Expected Energy means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

Excused Performance Event means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
 - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
 - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
 - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
 - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

Guaranteed Level means 90% of the Expected Energy for a Guarantee Year for the System.

Guarantee Year means each successive 12-month period during the Term commencing on the Commercial Operation Date.

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

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

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

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

Weather Adjustment means the ratio described in Section 3.01. Section 3.01

Weather File means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION

Section 2.01 Consideration

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

ARTICLE III. PERFORMANCE GUARANTEE

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

Section 3.01 Guaranteed Output Calculations.

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

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
 - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

Section 3.02 Actual Generation Measurement.

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
 - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
 - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

ARTICLE IV. CUSTOMER RESPONSIBILITIES

Section 4.01 Customer's Failure to Uphold Responsibilities.

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

ARTICLE V. EXPECTED ENERGY ADJUSTMENT

Section 5.01 Adjustment of Expected Energy.

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

Section 5.02 Notification of Changes to Expected Energy.

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

Appendix A – Expected Energy

Guarantee Year	Expected Annual kWh
1	737,856
2	736,012
3	734,172
4	732,336
5	730,505
6	728,679
7	726,858
8	725,040
9	723,228
10	721,420
11	719,616
12	717,817
13	716,023
14	714,233
15	712,447
16	710,666
17	708,889
18	707,117
19	705,349
20	703,586
21	701,827
22	700,072
23	698,322
24	696,576
25	694,835
Total	17,903,480

Appendix B – Avoided Energy Price

Guarantee Year	Avoided Energy Price per kWh
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

Appendix C – Weather File

SolarAnywhereTGY2016_(10km)_37.95_-121.85

Schedule A

DESCRIPTION OF SITE

Facility	System Size (kW DC)	Product Type	Module qty & type - SunPower	Inverters- qty & type-Delta
4545 Delta Fair Blvd, Antioch, CA 94509	437.10	Carport – Helix 1.5	(930) SPR-X21-470-COM	(3) M80U_121 (1) M60U_121 (2) M42U_121

Schedule B

DESCRIPTION OF SYSTEM

PV System Array Layouts and Electrical Single Line Diagrams



1
 ARRAY LAYOUT
 SCALE: 1/32" = 1'-0"

- NOTES:**
- 110 MPH WIND ZONE (ASCE 7-10) CATEGORY II, EXPOSURE C
 - SNOWLOAD 0 PSF, ELEVATION 50'
 - CORROSION RATE: [3.24mm/YR][0.126 IN/YR] [C4: 50% CS: 99%]
 - ALL STEEL SHALL BE GALVALUMATED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST-G165
 - REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST OVER 25 YEARS: G235
 - ARRAY SHOW ON AERIAL IMAGE
 - STANDARD CANOPY LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD
 - VEHICLE CLEARANCE CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
 - FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
 - TOTAL OF TREES TO BE REMOVED: 12
 - TOTAL OF LIGHT POLE TO BE REMOVED: 4

PANEL BOARD - CARPORT		ARRAY SUMMARY TABLE - CARPORT											
SPB01	SPB02	ROW	#STRING	KW (DC)	M80U_121 (15 STN)	M82U_121 (12 STN)	KW (AC)	CFE LISTING (KW-AC)	TILT	AZIMUTH CSI	AZIMUTH SPWR	AC RUN (INV-SPB)	AC RUN (SPB-SPB)
1	2	6x50	30	30	1	1	129	128.74	10°	144°	-36°	35,140	30
2	3	6x45	27	27	1	1	112	111.44	10°	144°	-36°	200,200	245
3	3	6x60	36	36	2	1	166	165.53	10°	144°	-36°	70,70	245
TOTAL			93	93	3	2	407	405.71					

PROJECT SUMMARY

PROJECT SUMMARY	CARPORT
TOTAL # OF MODULE	930
MODULE TYPE	SPR-X21-470-COM
# OF INVERTER	6
DC SYSTEM SIZE (KW)	437.10
AC SYSTEM SIZE (KW)	407.00



SUNPOWER® HELIX™ TIER 1

SUNPOWER
 1414 HARBORWAY SOUTH
 RICHMOND, CA 94804 USA
 (510) 540-0550

ENGINEER'S STAMP

CONTRA COSTA COUNTY
 4545 DELTA FAIR BLVD
 ANTIPOCH, CA 94509

ARRAY LAYOUT

REVISIONS

REV	DESIGN #	DESCRIPTION	DATE
A	00091445	PROPOSAL	08-27-18
B	00091361	RELOCATE CANOPIES	03-23-19

PROJECT: 000157288
 SHEET: AL1

Schedule C

PV SYSTEM PRICING

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

Schedule D
TERMINATIONS VALUES

Applicable Date : Years from Commercial Operation Date	Termination Value (\$)
0 Year	\$2,158,848
1 Year	\$1,743,694
2 Years	\$1,562,828
3 Years	\$1,381,198
4 Years	\$1,198,944
5 Years	\$1,015,692
6 Years	\$991,374
7 Years	\$966,144
8 Years	\$940,110
9 Years	\$912,928
10 Years	\$884,693
11 Years	\$855,820
12 Years	\$825,999
13 Years	\$794,937
14 Years	\$763,016
15 Years	\$730,289
16 Years	\$696,865
17 Years	\$662,514
18 Years	\$627,334
19 Years	\$591,311
20 Years	\$554,530
21 Years	\$516,796
22 Years	\$478,188
23 Years	\$438,696
24 Years	\$398,387