

# CITY COUNCIL REPORT



Meeting Date: **July 5, 2016**  
 General Plan Element: **Public Services & Facilities**  
 General Plan Goal: **Partner with other jurisdictions and agencies to achieve maximum efficiency in City service delivery.**

## ACTION

**Solar Services Agreement between Scottsdale Water and Solar City.** Adopt Resolution No. 10490 authorizing the Mayor to execute Agreement Numbers 2016-086-COS, 2016-088-COS and 2016-089-COS between the City of Scottsdale and Solar City for the financing, design, construction, maintenance and operation of solar power infrastructure at the Water Campus.

## BACKGROUND

The Scottsdale Water Campus is located southwest of the intersection of Pima Road and Hualapai Drive in north Scottsdale. The Water Campus refers to the 145 acre complex housing the Water Reclamation Facility, Advanced Wastewater Treatment Facility and the CAP Potable Water Treatment Plant.

Electric power is provided to the Water Campus by Arizona Public Service (APS) Company through two major on-site electric meters. Between both of these meters, the Water Campus infrastructure consumes over 40 million kWh of electricity annually at a cost of over three and a half million dollars.

In an effort to diversify its energy supply portfolio and achieve power cost savings, Scottsdale Water developed a Request for Proposals (RFP) in 2015 seeking a solar services package for a portion of its required annual electric power. The successful proposal was required to economically compete with grid supplied power while at the same time offer a renewable energy source.

The issued RFP required the solar services vendor to provide for a complete 'turnkey' solar energy system including financing, procurement, engineering, construction, operation and maintenance, utility coordination and interconnect agreement, including all labor and materials and any necessary temporary or interim facilities. The desired duration of the agreement is 20 years. Under this approach, the city will not be required to invest any capital, but will pay the solar vendor for the power produced by the solar installation. Based on the proposed size of the solar power system, Scottsdale Water anticipates offsetting approximately 10% of grid supplied electricity at the Water Campus with on-site solar power.

## ANALYSIS & ASSESSMENT

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In 2015, Scottsdale Water issued an RFP for solar services at the Scottsdale Water Campus. Based on stipulations that the respondents only furnish proposals that met identified cost criteria, only one proposal was submitted, by Solar City. The established three-person review panel scored the Solar City proposal and in turn recommended to the Purchasing Division that Solar City be selected for negotiation of detailed agreement terms and conditions.

During the detailed agreement development, it was determined that the integration of on-site battery storage could significantly increase the cost benefits received by the city. By recognizing rapid increases in power demand, the “smart” battery system software engages the batteries to alleviate power spikes registered by the electric utility. This in turn curbs demand at the utility meter, thereby reducing demand charges which can be a significant component of the monthly electric bill for the Water Campus. This integrated solar-battery system also benefits the electric utility by limiting power spikes at the Water Campus to a more predictable range.

Upon detailed evaluation, staff and Solar City determined that approximately \$1.4M in cost savings could be realized over the twenty year life of this solar services agreement. As part of this agreement, guarantees are outlined regarding the performance of both the solar panels and the battery storage infrastructure, and city will receive bill credits for system underperformance. The agreement also identifies buyout dollar amounts for milestones within the twenty year agreement in the event Scottsdale Water wishes to purchase the system outright and assume operational and maintenance responsibilities.

Based on measurable projected electric cost savings and environmental benefits, Scottsdale Water recommends the adoption of Resolution No. 10490 authorizing the Mayor to execute Agreement Numbers 2016-086-COS, 2016-088-COS and 2016-089-COS between the City of Scottsdale and Solar City for the financing, design, construction, maintenance and operation of solar power and battery storage infrastructure at the Water Campus.

## RESOURCE IMPACTS

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### **Available funding**

No funding is required for this action.

### **Staffing, Workload Impact**

No additional resources are required.

### **Future Budget Implications**

Scottsdale Water and its customers will benefit from projected utility cost savings over the course of this agreement.

## OPTIONS & STAFF RECOMMENDATION

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### **Recommended Approach**

14630175v1

## City Council Report | Solar Services Agreement

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Adopt Resolution No. 10490 authorizing the Mayor to execute Agreement Numbers 2016-086-COS, 2016-088-COS and 2016-089-COS between the City of Scottsdale and Solar City for the financing, design, construction, maintenance and operation of solar power infrastructure at the Water Campus.

### RESPONSIBLE DEPARTMENT(S)

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Water Resources Department

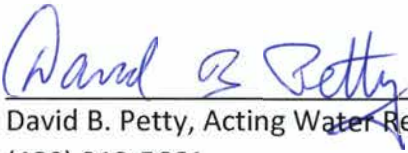
### STAFF CONTACTS (S)

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Chris Hassert, Planning and Engineering Director  
(480) 312-5681, [chassert@scottsdaleaz.gov](mailto:chassert@scottsdaleaz.gov)

### APPROVED BY

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David B. Petty, Acting Water Resources Director  
(480) 312-5661

6-17-16

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Date

### ATTACHMENTS

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1. Resolution No.10490
2. Contract 2016-086-COS
3. Contract 2016-088-COS
4. Contract 2016-089-COS
5. Memorandum - COS Environmental Quality Advisory Board (EQAB) - Recommendation for Solar PV Project at the Scottsdale Water Campus

RESOLUTION NO. 10490

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SCOTTSDALE, MARICOPA COUNTY, ARIZONA,  
AUTHORIZING CONTRACT NO. 2016-086-COS, CONTRACT  
NO. 2016-088-COS, AND CONTRACT NO. 2016-089-COS WITH  
SOLARCITY CORPORATION FOR SOLAR ENERGY  
PRODUCTION AND STORAGE OF ELECTRIC ENERGY FOR  
THE WATER RESOURCES DEPARTMENT

The City's Water Resources Department desires to take what steps it can to reduce the high costs of electric energy necessary to treat and delivery water and treat and reclaim wastewater; and

The Water Resource Department has been in negotiations with SolarCity Corporation concerning possible electric energy costs savings through the use of solar energy panels to provide a portion of the electric energy needed for Water Resource's operations; and

SolarCity has agreed to provide the financing, design, installation, operation and maintenance of a turnkey solar panel system and related Energy Storage Services to the Water Resource Department at a price that results in electric energy cost savings; and

The City and SolarCity desire to enter into the necessary contracts to provide these services.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor is authorized and directed to sign Contract No. 2016-086-COS, the Solar Service Agreement; Contract No. 2016-088-COS, the Performance Guarantee Agreement & Limited Warranty Agreement; and Contract No. 2016-089-COS, the Demand Logic Guarantee, all with SolarCity Corporation for a turnkey Solar Panel System and related Energy Storage Services for the Water Resource Department of the City of Scottsdale.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 5<sup>th</sup> day of July, 2016.

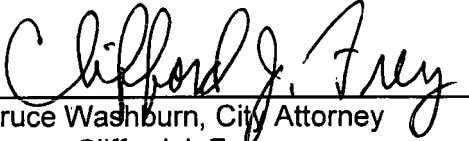
CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVES AS TO FORM:

A handwritten signature in black ink, reading "Clifford J. Frey". The signature is written in a cursive style with a large initial "C".

Bruce Washburn, City Attorney

By: Clifford J. Frey  
Senior Assistant City Attorney



### Solar Services Agreement

This Solar Services Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

<b>Purchaser:</b>		<b>Seller:</b>	
Name and Address	<b>City of Scottsdale</b> 9379 East San Salvador Drive Scottsdale, AZ 85258 Attention: Chris Hassert, Water Resources Planning & Engineering Director	Name and Address	<b>SolarCity Corporation</b> 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(480) 312-5681	Phone	(650) 638-1028
E-mail	<a href="mailto:Chassert@scottsdale.gov">Chassert@scottsdale.gov</a>	E-mail	<a href="mailto:Contracts@solarcity.com">Contracts@solarcity.com</a>
Facility Ownership	Purchaser owns the Facility		
Tax Status	Non-profit		
Project Name	City of Scottsdale - Water Campus		

This Agreement sets forth the terms and conditions of the finance, design installation, operation and maintenance of the turnkey solar panel system described in **Exhibit 2**, (i) Energy Storage Services from the Storage Unit in accordance with Exhibit 9 (Energy Storage Services) (the solar panel system and the Storage Unit are, collectively, referred to as the System.) The utility provider referenced in this agreement shall be Arizona Public Service (the "Utility").

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Finance Attachment
Exhibit 2	Solar Panel System Description
Exhibit 3	Purchaser's Facility
Exhibit 4	Delivery Point
Exhibit 5	License Area
Exhibit 6	Intentionally Deleted
Exhibit 7	General Terms and Conditions ( <i>Revised April 2012</i> )
Exhibit 8	Optional State Addendum
Exhibit 9	Energy Storage Services

**Purchaser: City of Scottsdale**

**SolarCity Corporation**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: W.J. "Jim" Lane

Printed Name: LYNDON RIVE

Title: Mayor

Title: CEO

Date: \_\_\_\_\_

Date: JUNE 9, 2016

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

REVIEWED BY:

Katie Callaway  
Katie Callaway  
Risk Management Director

WATER RESOURCES

Dave Petty  
Dave Petty  
Interim Water Resources Director

APPROVED AS TO FORM:

Clifford J. Frey  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**Exhibit 1**  
**Pricing Attachment**

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to three (3) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes.** Notwithstanding anything to the contrary in the Solar Services Agreement (including, without limitation, Sections 5, 6(a), and 16(a) of the General Terms and Conditions), the Environmental Incentives and Environmental Attributes (but not the Tax Credits) accrue to Purchaser. Purchaser has, in turn, assigned payment of the Environmental Incentives to Seller
4. **Contract Price:**

<b>Contract Year</b>	<b>\$/kWh</b>
1	\$0.0575
2	\$0.0575
3	\$0.0575
4	\$0.0575
5	\$0.0575
6	\$0.0575
7	\$0.0575
8	\$0.0575
9	\$0.0575
10	\$0.0575
11	\$0.0575
12	\$0.0575
13	\$0.0575
14	\$0.0575
15	\$0.0575
16	\$0.0575
17	\$0.0575
18	\$0.0575
19	\$0.0575
20	\$0.0575

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

Total number of payments over Initial Term	<b>240</b>
Average amount of each payment in the first year (estimate)	\$32,185
Total cost to Purchaser (estimate)	\$7,512,355

5. **Condition Satisfaction Date:** 180 days after the Effective Date
6. **Anticipated Commercial Operation Date:** 365 days after the Effective Date
7. **Outside Commercial Operation Date:** 545 days after the Effective Date



8. **Purchase Option Price**

End of Contract Year	Option Price*
Buyout after year 6	\$5,594,748
Buyout after year 10	\$4,971,760
Buyout after year 20	Fair Market Value

\* Higher of Fair Market Value of System or amount specified

9. **Termination Value:**

Contract Year	Termination Value
1	\$10,224,128
2	\$9,023,508
3	\$7,441,719
4	\$6,186,862
5	\$5,125,155
6	\$4,041,062
7	\$3,693,701
8	\$3,498,982
9	\$3,295,643
10	\$3,083,245
11	\$2,861,331
12	\$2,629,420
13	\$2,387,006
14	\$2,133,558
15	\$1,868,520
16	\$1,591,306
17	\$1,301,302
18	\$997,864
19	\$680,314
20	\$347,941

10. **Rebate Variance:** All prices in this Agreement are calculated based on a rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received, provided, however, that Purchaser shall have the right to terminate this Agreement if it does not accept the pro-rata adjustment.

**Exhibit 2****System Description, Delivery Point and Premises**

1. **Solar Panel System Location:** 8662 E Union Hills Drive, Scottsdale, AZ 85255.
2. **Solar Panel System Size (DC kW):** 2,319.03
3. **Expected First Year Energy Production (kWh):** 3,995,840
4. **Scope:** Project for City of Scottsdale Water Campus
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Canadian Solar CS6X-315P	7362

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Fronius Symo 24.0-3 (480)	21
Solectria SGI 750XTM	2

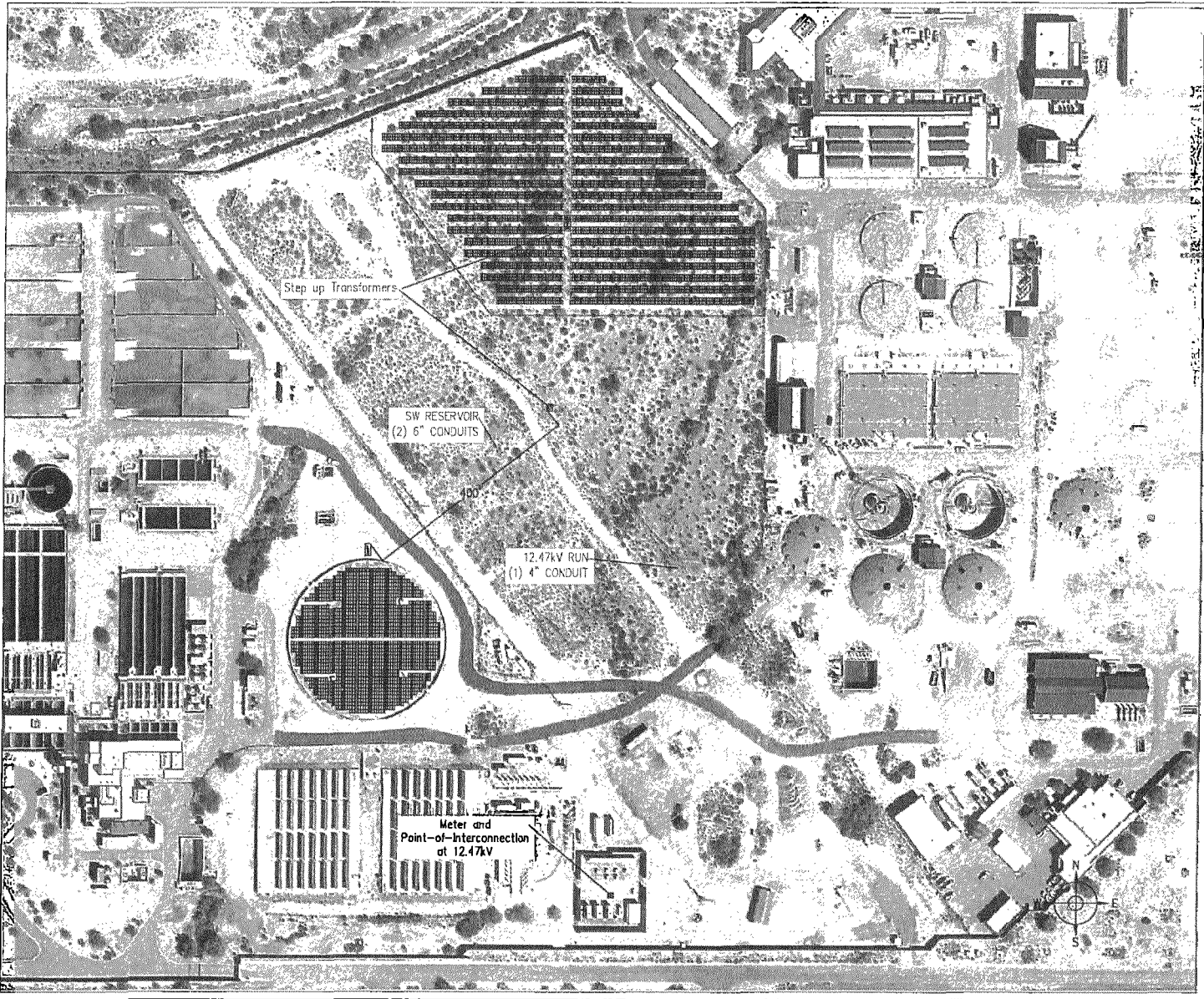
7. **Expected Structure: Non-penetrating roof and ground mount system.**
8. **Includes:** SolarCity Limited Warranty, installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system), and delivered to Purchaser at the delivery point identified on Exhibit 4 (the "Delivery Point").
9. **Excludes** Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure, payment bonds, performance bonds, tree removal, tree trimming, the payment of prevailing wages (i.e. prevailing wages not required). Purchaser will finance and facilitate grading of the ground mounted area and routing of new electrical conduit from the interconnect location to the three solar array locations. Seller will provide reasonably assistance to Purchaser in planning the grading and conduit placement.

**Exhibit 3**  
**Purchaser's Facility**

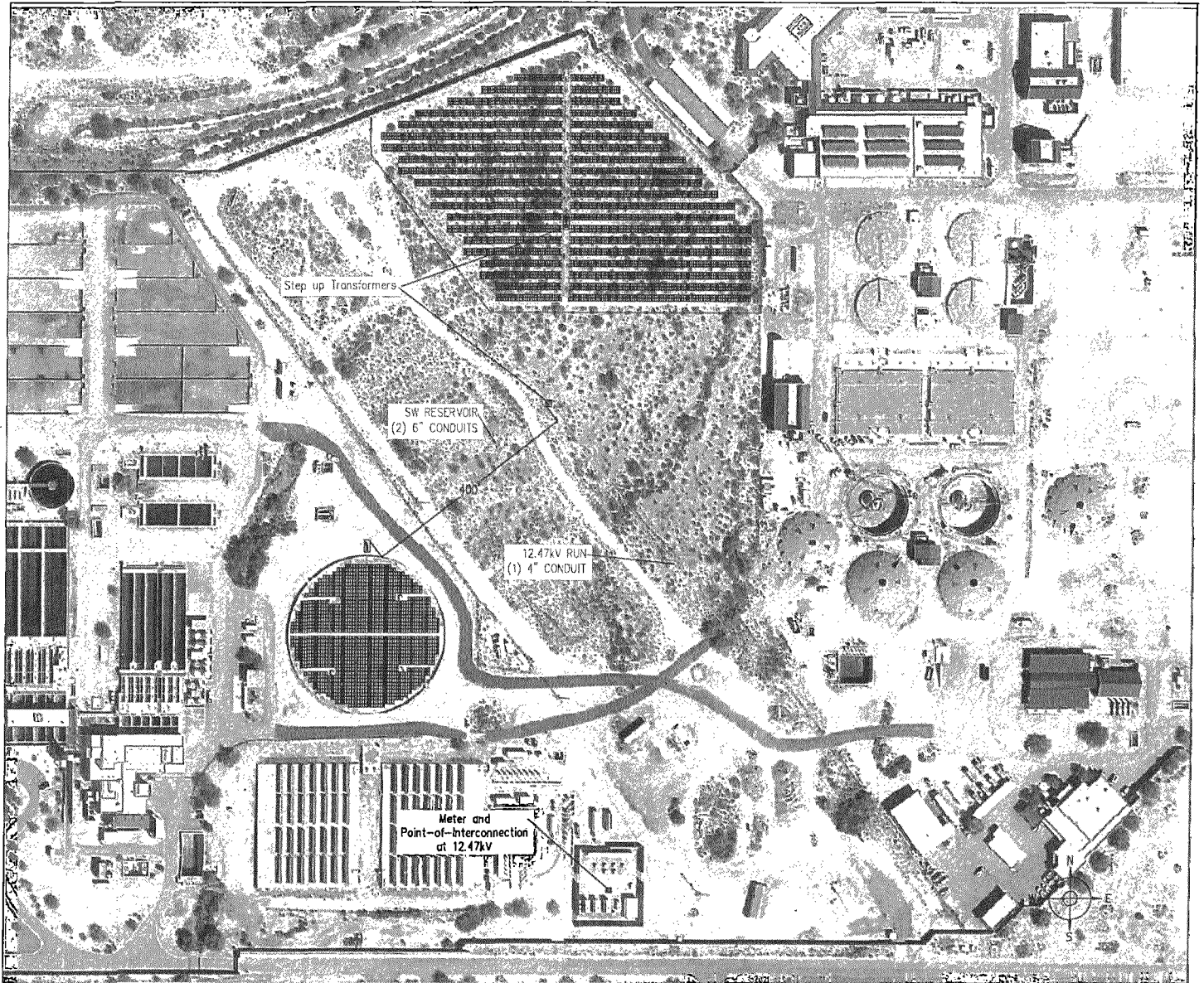
A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF MARICOPA, WITH A SITUS ADDRESS OF 8662 E UNION HILLS DR, SCOTTSDALE, AZ 85255-5434 CURRENTLY OWNED BY SCOTTSDALE CITY OF CP 9981 HAVING A TAX ASSESSOR NUMBER OF 215-06-001-A AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS TH PT S2 SEC DAF COM SE COR SEC TH W 973.84F M/L TO POB TH N 36D 8M W 1784.81F TH W 731.34F TH S 1440.92F TO PT ON S LN SEC TH E ALG SD S LN 1785.59F M/L TO POB .

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF MARICOPA, WITH A SITUS ADDRESS OF 8700 E UNION HILLS DR, SCOTTSDALE, AZ 85255-5693 CURRENTLY OWNED BY SCOTTSDALE CITY OF HAVING A TAX ASSESSOR NUMBER OF 212-31-056 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS STATE PLAT NO 27 CORE NORTH MCR 344-29 AND DESCRIBED IN DOCUMENT NUMBER 136042 RECORDED 03/17/1992.

**Exhibit 4**  
**Delivery Point**



**Exhibit 5**  
**License Area**



**Exhibit 6**

**Intentionally Deleted**

**Exhibit 7****Solar Services Agreement General Terms and Conditions***Revised April 2012*

**Purpose:** The purpose of this Agreement is to set forth the terms and conditions by which SolarCity will provide the Purchaser with the financing, design, installation, operation and maintenance of a solar panel system at Purchaser's Facility.

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
  
2. **Finance, Design, Development and Operation of Solar Panel System.** Seller shall provide for Purchaser the financing, design, development and operation of the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "Term"). At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller as set forth more fully in Section 16 of this Agreement.
  
3. **Term and Termination.**
  - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility. Subject to Section 23(q), this Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing, shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement, unless beyond the control of the Purchaser.
  
  - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond

positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

**4. Billing and Payment.**

- a. Monthly Charges. The Purchaser and Seller agree that Purchaser will take title to all electric energy that the System generates from the moment the System produces such energy and that such energy shall be delivered to Purchaser at the delivery point identified on Exhibit 4 (the "Delivery Point"). Purchaser shall purchase all such electric energy as and when produced by the System. Each month Purchaser shall pay Seller for the benefit it receives under this Agreement. Purchaser agrees that it will make such monthly payments to Seller and that the rate shown in Exhibit 1 (the "Contract Price") is a fair and reasonable price in light of the benefit that the Purchaser receives under this Agreement. The parties agree that the benefit to Purchaser under this Agreement is best measured with relationship to the electricity that the System produces and as such the monthly payment will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
- b. Monthly Invoices. Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System as measured by the System meter, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. Utility Invoices. Purchaser shall authorize the Utility to send to Seller duplicates of any bills sent to Purchaser. If Utility does not permit duplicate bills to be sent to Seller, Purchaser shall, promptly upon receipt of each bill, make a photocopy of each bill and mail the copy to Seller. Purchaser shall pay all charges assessed by the Utility to the Facility.
- d. Taxes. Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy or Storage Services produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when the System fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 4(d), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.



- e. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

**5. Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's benefits under this Agreement do not include the right to the Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

**"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

**"Environmental Incentives"** means any credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

**"Governmental Authority"** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal

Energy Regulatory Commission or the Arizona Corporation Commission), or any arbitrator with authority to bind a party at law.

**"Tax Credits"** means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

**6. Conditions to Obligations.**

a. Conditions to Seller's Obligations.

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work,, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "Construction Agreement" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system;
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

b. Conditions to Purchaser's Obligations.

- i. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit 1**).

c. Failure of Conditions.

If any of the conditions listed in subsections a) or b) above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

**7. Seller's Rights and Obligations.**

- a. Permits and Approvals. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
  - i. any zoning, land use and building permits required to construct, install and operate the System; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. Standard System Repair and Maintenance. Seller shall finance, design, develop, operate and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to and maintenance of the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. Non-Standard System Repair and Maintenance. If Seller incurs incremental costs to maintain the System due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, or changes in the conditions at the Facility within the control of the Purchaser, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. Breakdown Notice. Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. Suspension. Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. Use of Contractors and Subcontractors. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the conduct and quality of the work performed by its contractors and subcontractors. If a list of pre-

approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to Exhibit 7. All Contractors and subcontractors other than those that may be scheduled on an appendix to Exhibit 7 shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.

- g. Liens and Payment of Contractors and Suppliers. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. No Warranty. **NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY.** The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

**8. Purchaser Rights and Obligations.**

- a. Facility Access Rights. Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises (the "License Area") for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/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. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "License Term"), or until the System has been fully decommissioned and removed by the Purchaser, whichever is sooner. During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the License Area are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The Seller agrees to adhere to the reasonable security requirements of which it had been informed by Purchaser. Termination of this Agreement shall not terminate the License Term, which, as stated above, shall include a period of

one hundred and twenty (120) days following the date of termination, or until the System has been fully decommissioned and removed by the Purchaser, whichever is sooner. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties.

- b. OSHA Compliance. Purchaser shall ensure that Purchaser's employees, agents and contractors adhere to all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes in its performance under this Agreement.
- c. Maintenance of Facility. Purchaser shall, at its sole cost and expense, maintain Purchaser's Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will make every effort within its control to not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System as provided in Subsection 8(j) below.
- d. No Alteration of Facility. Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System that was caused by or that can reasonably be construed to have been caused by the negligence or willful misconduct of Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. Outages. Purchaser shall be permitted to be off line for a total of 48 day-light hours (each hour, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall

invoice Purchaser for such amount in accordance with Section 4. Purchaser may purchase electricity from any source during the Term of this Agreement.

- f. Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. Security. Purchaser employs security personnel and has installed physical barriers and maintains CCTV surveillance of the License Area. Purchaser shall not reduce such security measures without prior written notice to Seller. Purchaser shall be responsible for any damage or vandalism to the System as a result of the Purchaser's failure to use reasonable efforts to maintain such security measures. Purchaser will not conduct activities on, in or about the License Area or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. Insolation. Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels.
- i. Intentionally Deleted.
- j. Breakdown Notice. Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. Metering. Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System.

**9. Change in Law**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement

(notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination and the timely removal of the System.

**10. Relocation of System.**

If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to **Exhibit 1** such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

**11. Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date but in no event later than ninety (90) days after the expiration of the Term provided that the portion of the System comprising the Storage Unit shall be removed no later than ninety (90) days after expiration of the Storage Services Term or earlier

termination of this Agreement (provided Purchaser does not exercise its purchase option prior to the end of the tenth (10th) Contract Year). Excluding ordinary wear and tear, the Facility shall be returned to its original condition, including the System mounting pads or other support structures or the Storage Unit, as applicable. In no case shall Seller's removal of the System or the Storage Unit, as applicable, affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal and shall be flashed and/or patched to the existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System or the Storage Unit, as applicable by such agreed upon date, Purchaser shall have the right, at its option, to remove the System or the Storage Unit, as applicable, to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during such removal.

**12. Intentionally Deleted.**

**13. Default, Remedies and Damages.**

- a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "Defaulting Party" and each event of default shall be a "Default Event":
1. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days, or as otherwise agreed to in writing by both parties following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");
  2. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  3. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  4. Purchaser loses its rights to occupy and enjoy the Premises;
  5. a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect; or



6. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. (Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.)

**b. Remedies.**

1. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.
2. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
3. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in Exhibit 1 (the "**Termination Value**") for such Contract Year, (ii) removal costs as provided in Section 13(b)3(C) and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of any Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in Exhibit 1 is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility

over the Contract Price for the reasonably expected production of the Facility for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

**14. Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

1. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
2. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

1. License. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.

2. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
3. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
4. Purchaser Status. Purchaser is not a public electric utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
5. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. **System and Facility Damage and Insurance.**

a. System and Facility Damage.

1. Seller's Obligations. At all times, Seller bears the risk of loss to the System other than by Purchaser's negligence or willful misconduct, and if the **System** is damaged or destroyed other than by Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum of the amounts described in Section 13.b.3.A)(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b.3.A)(iii).
2. Purchaser's Obligations. At all times, Purchaser bears the risk of loss to the Facility other than by Seller's negligence or willful misconduct. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in Exhibit 1 and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. Insurance Representations and Requirements.

1. Seller agrees to comply with all applicable City ordinances and state and federal laws and regulations.
2. Without limiting any obligations or liabilities of Seller, Seller must purchase and maintain, at its own expense, this Contract's stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona with an AM Best, Inc. rating of B ++ 6 or above. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

c. No Representation of Coverage Adequacy

By requiring the insurance stated in this Contract, the City of Scottsdale does not represent that coverage and limits will be adequate to protect Seller. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not relieve Seller from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

d. Coverage Term

All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.

e. Claims Made

In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.

f. Policy Deductibles and or Self-Insured Retentions

The policy requirements may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to City of Scottsdale. Seller is solely responsible for any deductible or self-insured retention amount to the insurer.

g. Use of Subcontractors

If any work under this Contract is subcontracted in any way, Seller must execute a written agreement with Subcontractor containing indemnification and insurance requirements, as applicable to such Subcontractor's scope of work, protecting City of Scottsdale and Seller. Seller will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

h. Evidence of Insurance

1. Before starting any work or services under this Contract, Seller must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Seller's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Seller's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
2. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Excess Liability - Follow Form to underlying insurance as required.
3. Seller's insurance must be primary insurance as respects performance of subject contract.
4. If the Seller receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Seller's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

i. Required Coverage

1. Commercial General Liability/Garage Liability

- a) Seller shall maintain "occurrence" form Commercial General Liability/Garage Liability insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate, and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Sellers, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- b) Seller shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Seller's owned, hired, and non-owned vehicles assigned to or used in the performance of the Seller's work or services under this Contract. If any

hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

j. Workers Compensation Insurance

Seller must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Seller's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

k. Purchaser's Insurance.

Purchaser shall maintain (i) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least \$1,000,000 and (iv) worker's compensation insurance as required by law.

16. Ownership; Option to Purchase.

- a. Ownership of System. Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located and Seller shall file such disclaimer for Purchaser after Purchaser completes the disclaimer. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises.

- b. Option to Purchase. At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to (i) with respect to an option exercised at the end of the sixth (6th) or tenth (10th) Contract Years or at the end of the Initial Term, the greater of (A) the amount set forth at such time in the Purchase Option Price schedule in Exhibit 1, and (B) the Fair Market Value of the System, and (ii) with respect to an option exercised at the end of an Additional Term, the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

**17. Indemnification and Limitations of Liability.**

- a. General. To the fullest extent permitted by law, each Party, its respective successors, assigns and guarantors, (collectively, the "Indemnifying Party") must defend, indemnify and hold harmless the other Party, its respective agents, representatives, officers, directors, officials and employees (collectively, the "Indemnified Party") from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation (collectively, "Liabilities"), resulting from third party claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by the Indemnifying Party while performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of the Indemnifying Party to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is agreed that the Indemnifying Party will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. Notwithstanding the foregoing, nothing herein shall require the Indemnifying

Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(d).

Seller and Purchaser agree that if it cannot be determined that the conduct or alleged conduct giving rise to a third party action arises out of either the actions of the seller or purchaser; or the alleged wrongful conduct itself cannot be clearly apportioned to one party as being seventy percent (70%) or more at fault or negligent; or if fault or negligence cannot be readily determined from the claim or the allegations as pled then:

(i) The Seller agrees to defend and indemnify the Purchaser, until the conduct complained of is clarified to the point where it can be determined and allocated pursuant to the indemnity agreement above; provided that the conduct or claim is arising out of activity which occurred during the installation course of construction of the products.

(ii) The Purchaser agrees to defend and indemnify the Seller until the conduct complained of is clarified to the point where it can be determined and allocated pursuant to the indemnity agreement above; provided that the conduct or claim is arising out of activity which occurred during the term of this contract, except during the installation and course of construction of the products.

- b. Insurance. Insurance provisions stated in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Article will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.
- c. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(c) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.



- d. Environmental Indemnification. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the License Area of any Hazardous Substance (as defined in Section 17(d)(i)) to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the License Area or the Premises generally deposit, spill or release of any Hazardous Substance.
- i. "Hazardous Substance" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- e. Limitations on Liability.
- i. No Consequential Damages. Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. Seller Limitation. Except with respect to indemnification of third party claims pursuant to Section 17 and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 17(e)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.
- iii. Purchaser Limitation. Purchaser's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the greater of (a) the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement or (b) three million dollars (\$3,000,000). The provisions of this Section 17(e)(iii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Notwithstanding the foregoing, the limitations set forth in this Section 18(e)(iii) shall not apply to the following obligations:

1. Purchaser's indemnification of third party claims pursuant to Section 17 (Indemnification and Limitations of Liability);
2. Purchaser's payment obligations pursuant to Section 4 (Billing and Payment);
3. Purchaser's payment of the amount specified in Section 16(b) (Options to Purchase), should such option be exercised; and,
4. Purchaser's payment of the Termination Payment, as set forth in Section 13(b)(3)(A) (Remedies, within Default, Remedies and Damages).

**18. Force Majeure.**

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out not caused by the acts of Seller; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Seller shall not be liable for any damage to the System or the Facility resulting from a Force Majeure event. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event.

- d. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

**19. Assignment and Financing.**

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller (*provided* that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments *only* upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties ("Financing Parties") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

**20. Confidentiality and Publicity.**

- a. Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation

and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.

- b. Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. Goodwill and Publicity. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other

Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

**22. General Provisions**

- a. Choice of Law. Arizona law shall govern this Agreement without giving effect to conflict of laws principles.
- b. Jurisdiction of Court. Jurisdiction for any action brought to enforce any provision of this Contract shall lie with the Maricopa County Superior Court and the Federal District Court, and such action must be filed, tried, and remain in the Maricopa County Superior Court or Federal District Court, as applicable, for any and all proceedings.
- c. Notices. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically send in PDF form to it as an original document.
- d. Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7(h) (No Warranty), 8(a) (Facility Access Rights), Section 11 (Removal of System at Expiration), Section 14 (Representations and Warranties), Section 15 (Insurance), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22(c) (Notices), Section 22(g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. Right of Waiver. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's

exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- g. Comparative Negligence. It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) 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; (ii) 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 (iii) such other information as may be reasonably requested by the requesting Party. 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.
- j. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings that is inconsistent with this section of the Code.

- k. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. Full Agreement, Modification, Invalidity, Counterparts, Captions. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. Forward Contract. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. Bonds. Notwithstanding any language to the contrary in this Agreement and solely to the extent a performance and/or payment bond is being issued to Purchaser:
- p. Bonding.
  - i. Performance bond liability. Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
  - ii. Payment bond liability. Any payment bond issued will cease at the termination of any time required by law.
  - iii. Performance Guarantee. Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.

- q. Purchaser may rescind this Agreement at any time prior to midnight on the third business day after the date Purchaser signed this Agreement; provided that installation of the System has not yet commenced.
- r. Utility rates and utility rate structures are subject to changes. These changes cannot be accurately predicted. Projected savings from your distributed energy generation system are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative or regulatory action.
- s. Purchaser may rescind this Agreement at any time prior to midnight on the third business day after the date Purchaser signs this Agreement; provided that installation of the System has not yet commenced. Utility rates and utility rate structures are subject to changes. These changes cannot be accurately predicted. Projected savings from your distributed energy generation system are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative or regulatory action.

I acknowledge I have read Section 22(r).   CJT   (Initials of Water Resources Planning & Engineering Director.)

**End of Exhibit 7**



**Exhibit 8****Special Terms and Conditions**

**Purpose:** The purpose of this Exhibit is to set forth the Special terms and conditions by which SolarCity will provide the Purchaser with the design, installation, operation and maintenance of a solar panel system at Purchaser's Facility. In the event of any conflict between these Special Terms and Conditions and the General Terms and Conditions or any other provisions of the Agreement, these Special Terms and Conditions shall prevail.

**1. Compliance with A.R.S. § 41-4401:**

Pursuant to the provisions of A.R.S. § 41-4401, the Seller hereby warrants to the Purchaser that to the extent applicable to this Agreement and the services provided hereunder, the Seller and each of its subconsultants ("Subconsultants") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty (Exhibit 9) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The Purchaser retains the legal right to inspect the papers of any Seller or Subconsultant employee who Projects on this Contract to ensure that the Seller or Subconsultant is complying with the Contractor Immigration Warranty. The Seller agrees to assist the Purchaser in the conduct of any such inspections.

The Purchaser may, at its sole discretion, conduct random verifications of the employment records of the Seller and any Subconsultants to ensure compliance with Contractor Immigration Warranty. The Seller agrees to assist the Purchaser in performing any such random verifications.

The provisions of this Section must be included in any contract the Seller enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Seller or subconsultant. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

- 2. Cancellation for Conflict of Interest:** Pursuant to ARS § 38-511, a Party may cancel this Agreement at any time within three years after its execution without further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of such Party is or becomes at any time while the Agreement is in effect an employee of or consultant to the other Party. The cancellation shall be effective upon receipt of written notice of the cancellation unless the notice specifies another time.

- 3. Purchaser Budgeting:** Upon execution of this Agreement and prior to the commencement of each subsequent fiscal year of Purchaser during the Initial Term and any Additional Term, Purchaser shall have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such fiscal year in accordance with Arizona Constitution Article 9, 13 and A.R.S. § 41-17106 and other applicable law; any breach of this provision by Purchaser shall be deemed to have arisen during a fiscal period of Purchaser for which budgetary approval or certification of its obligations under this Agreement is in effect. A Default Event shall automatically and without further notice occur hereunder as of such date of non-appropriation wherein Purchaser shall be treated as the Defaulting Party.

4. **Purchaser Payment Limitation:** Notwithstanding any other provision of this Agreement, no part of the amounts payable by Purchaser pursuant to this Agreement shall be payable out of any ad valorem taxes imposed by Purchaser or from bonds or other obligations, the payment of which Purchaser's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by Purchaser according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State of Arizona, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State of Arizona. Purchaser's obligation to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, Purchaser, the State of Arizona, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes.
5. **Compliance with Laws and Governmental Capacity:** Seller shall at all times comply with all federal, State and local laws, ordinances, rules, and regulations which are applicable to its activities on the Premises. Seller shall construct and install the System and any other improvements on the Premises in compliance with all federal, State and local laws, ordinances, rules, and regulations which are applicable to its construction or installation on the Premises (including but not limited to the Scottsdale City Code). Any approvals Seller is required to obtain from Purchaser under this Agreement are in addition to and separate from approvals Seller must obtain from the City of Scottsdale in its governmental capacity, including but not limited to applicable approvals required under the City of Scottsdale Building Code or Zoning Ordinance. Nothing in this Agreement shall constitute a waiver of any rights, privileges, benefits, immunities and exemptions of the City of Scottsdale in its governmental capacity as a municipal corporation and political subdivision of the State of Arizona; provided, however, that the Purchaser represents, warrants, and agrees (and Seller acknowledges) that its execution and delivery of this Agreement and its performance of the contractual obligations contemplated by this Agreement, constitute proprietary and commercial acts rather than public or governmental acts.
7. **Public Records:** Notwithstanding anything in this Agreement to the contrary, Seller acknowledges that Purchaser is a municipal corporation and political subdivision of the State of Arizona, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process.
8. **Invalidity, Modification:** If any term or provision of this Agreement is found to be illegal or unenforceable, then despite the illegality or unenforceability, this Agreement will remain in full force and effect and that term or provision will be considered to be deleted. In accordance with the provisions of ARS §41-194.01, should the Attorney General give notice to the Purchaser that any provision(s) of this Agreement violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Agreement and the Purchaser and the Seller shall, within ten (10) days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

**Exhibit 9**

**Energy Storage Services**

- 1) **Energy Storage Services.** During the first twenty (20) Contract Years of the Initial Term (the "Storage Services Term"), Seller shall provide the following services to Purchaser (collectively, the "Storage Services"):
  - a) Installation of 2000 kWh lithium-ion battery and associated power electronics (the "Storage Unit").
  - b) Operation and maintenance of the Storage Unit.
  - c) Discharge of electric energy from the Storage Unit to the Facility to reduce the Facility's peak demand.
- 2) **Energy Storage Management.** To the extent permitted by Applicable Law, Seller shall have the sole right and responsibility for operation and maintenance of the Storage Unit, including the right to discharge or otherwise use the Storage Unit for wholesale energy sales, ancillary services, and qualification for resource adequacy or generation capacity credits.
- 3) **Monthly Services Charge.** Purchaser shall pay Seller a fixed monthly fee of \$13,037.50 for the Storage Services throughout the Storage Services Term.
- 4) **Reduction in Photovoltaic System Size.** If the capacity of the solar panel system, not including the Storage Services, is reduced by more than twenty-five percent (25%) from the values listed in Exhibit 2 as of the Effective Date the Parties shall re-convene and negotiate in good faith an amendment to this Exhibit 4 (as necessary in the determination of Seller). If Seller determines that an amendment is necessary and the Parties cannot agree to such an amendment within sixty (60) days of such reduction then Seller may at its option elect to cease providing Storage Services, in which case, neither Party shall further liability with regard to Storage Services.



### Performance Guarantee Agreement & Limited Warranty Agreement

This Performance Guarantee Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:		Seller:	
Name and Address	<b>City of Scottsdale</b> 9312 N. 94 <sup>th</sup> St, Scottsdale, AZ 85258 <b>Water Campus</b> Attn: Chris Hassert	Name and Address	<b>SolarCity Corporation</b> 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(480) 312-5681	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	<a href="mailto:Chassert@scottsdale.gov">Chassert@scottsdale.gov</a>	E-mail	<a href="mailto:contracts@solarcity.com">contracts@solarcity.com</a>

This Agreement sets forth the terms and conditions of the performance guarantee required to be provided by Seller pursuant to the requirements of A.R.S. §44-1762 and 44-1763 in conjunction with that certain Solar Services Agreement by and between Seller and Purchaser dated of even date herewith (the "**SSA**"). All capitalized terms used hereunder shall have the meanings given such terms in the SSA. Pursuant to § 21.e of the SSA both Parties acknowledge that this Agreement is (a) necessary to the performance under the SSA, (b) necessary to carry out the intent of the SSA, (c) is not inconsistent with the provisions of the SSA, and (d) does not involve the assumptions of obligations other than those provided for in the SSA. This Agreement provides additional assurance to the Purchaser in exchange for \$10 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Exhibit 1 attached to this Agreement is incorporated and made part of this Agreement.

1. Seller will provide to Purchaser a feasibility study pursuant to provisions of A.R.S. §44-1762 and 44-1763. This report shall be reviewed and approved by Purchaser before the commencement of design. Seller shall transmit a copy of the approved feasibility study to the Governor's Office of Energy Policy.
2. Seller guarantees that during the term of the SSA the Generating Facilities in aggregate will generate the guaranteed annual kilowatt-hours (kWh) ("**Guaranteed Annual kWh**") of energy set forth as follows:
  - A. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility, the cumulative Actual Annual kWh (defined below) generated by the System is *less* than the Guaranteed Annual kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed Annual kWh and the cumulative Actual Annual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.
  - B. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility the Actual Annual kWh is *greater* than the Guaranteed Annual kWh during any twelve (12) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the future.
  - C. Guaranteed Annual kWh:

Year	Guaranteed kWh
Year 1 (95%)	3,796,048
Year 2 (95%)	3,777,068

Year 3 (95%)	3,758,183
Year 4 (95%)	3,739,392
Year 5 (aggregate of years 1-5 @ 100%)	19,780,407
Year 6 (95%)	3,702,092
Year 7 (95%)	3,683,581
Year 8 (95%)	3,665,163
Year 9 (95%)	3,646,837
Year 10 (aggregate of years 6-10 @ 100%)	19,290,817
Year 11 (95%)	3,610,460
Year 12 (95%)	3,592,408
Year 13 (95%)	3,574,446
Year 14 (95%)	3,556,574
Year 15 (aggregate of years 11-15 @ 100%)	18,813,345
Year 16 (95%)	3,521,097
Year 17 (95%)	3,503,491
Year 18 (95%)	3,485,974
Year 19 (95%)	3,468,544
Year 20 (aggregate of years 16-20 @ 100%)	18,347,692

- D. **“Actual Annual kWh”** means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive twelve (12) month anniversary (commencing on the first such anniversary) of Purchaser's last of the first monthly payments under the SSA. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.
- E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	Guaranteed Energy Price per kWh
Year 1 Guaranteed Energy Price	\$0.010
Year 2 Guaranteed Energy Price	\$0.010
Year 3 Guaranteed Energy Price	\$0.010
Year 4 Guaranteed Energy Price	\$0.010
Year 5 Guaranteed Energy Price	\$0.010
Year 6 Guaranteed Energy Price	\$0.010
Year 7 Guaranteed Energy Price	\$0.010
Year 8 Guaranteed Energy Price	\$0.010
Year 9 Guaranteed Energy Price	\$0.010
Year 10 Guaranteed Energy Price	\$0.010
Year 11 Guaranteed Energy Price	\$0.010
Year 12 Guaranteed Energy Price	\$0.010
Year 13 Guaranteed Energy Price	\$0.010
Year 14 Guaranteed Energy Price	\$0.010
Year 15 Guaranteed Energy Price	\$0.010
Year 16 Guaranteed Energy Price	\$0.010
Year 17 Guaranteed Energy Price	\$0.010
Year 18 Guaranteed Energy Price	\$0.010
Year 19 Guaranteed Energy Price	\$0.010
Year 20 Guaranteed Energy Price	\$0.010

3. The term of this Agreement shall be concurrent with the term of the SSA.

### **LIMITED WARRANTY AGREEMENT (Commercial SSA)**

This Limited Warranty Agreement (this "Agreement") is SolarCity Corporation's ("SolarCity") agreement to provide installation and other services for the solar panel systems(s) (the "System") it will use to provide solar services to you (the "Purchaser" or the "City") and to provide a warranty for the System. A description of the System that will be used to provide solar services to you is set forth in the SSA agreement (the "SSA") that you executed with SolarCity. The System will be professionally installed by SolarCity at the address you listed in the SSA. We will refer to the installation location as the "Premises" or your "Facility."

When you choose SolarCity, you can be assured that we will stand behind our System and installation with industry-leading warranties. We will professionally install your solar system in a good and workman-like manner and honor our commitment to you to keep your System in good working order. Read below for full details on SolarCity's Installation Warranty, Use Warranty, Roof Warranty and Repair Promise. Capitalized terms not otherwise defined herein shall have the meaning set forth in your SSA.

#### **1. SOLARCITY'S STANDARDS**

A. For the purpose of this Agreement the standards for SolarCity's performance will be (i) normal professional standards of performance within the solar photovoltaic power generation industry in the relevant market; and (ii) Prudent Electrical Practices. "Prudent Electrical Practices" means those practices, as changed from time to time, that are engaged in or approved by a significant portion of the solar energy electrical generation industry operating in the United States to operate electric equipment lawfully and with reasonable safety, dependability, efficiency and economy. For purposes of this Agreement, SolarCity's performance shall include necessary roof preparation for the installation of the System.

B. All work done under this Agreement shall be performed in accordance with the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction – 2013 Revision to the 2012 Edition ("MAG Specifications") and the City of Scottsdale Supplement to the MAG Uniform Standard Details and Specifications for Public Works Construction – 2010 ("City of Scottsdale Supplement"), except as modified in this Agreement.

#### **2. LIMITED WARRANTIES**

##### **A. LIMITED WARRANTIES**

SolarCity warrants the System as follows:

##### **i. Installation Warranty**

SolarCity will professionally install the System in a good and workman-like manner according to our commitments to you in Section 1. This installation warranty will run for two (2) years following the commencement of System operation.

##### **ii. Use Warranty**

Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Warranty Period (as defined below);

##### **iii. Roof Warranty**

If SolarCity penetrates the Facility roof in performing the Installation Services, SolarCity will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) two (2) years following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof; and

##### **iv. Repair Promise**

During the Warranty Period, SolarCity will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to SolarCity under this Agreement. If we damage your Facility, Property or belongings we will repair the damage we cause or pay you for the full reasonable documented cost to repair the damage we cause. SolarCity may use new or reconditioned parts when making repairs or replacements. SolarCity may also, at no additional cost to Purchaser, upgrade or add to any part of the System to ensure that it performs according to the guarantees set forth in this Agreement.

This Agreement will continue from the date SolarCity starts installing the System at your Facility through the longer of (i) the SSA Term (as that term is defined in the SSA); and (ii) ten (10) years (the "Warranty Period") except for the warranties specified in Section 2 (A)(i) and (iii) above, which may have shorter periods. If Purchaser has assumed an existing SSA, then this Agreement will cover Purchaser for the remaining balance of the original Warranty Period.

## **B. MAINTENANCE AND OPERATION**

### **i. General**

During the Warranty Period, SolarCity will operate and perform all routine and emergency repairs to and maintenance of the System. SolarCity will provide Purchaser with a copy of SolarCity's Solar Operation and Maintenance Guide. This guide provides Purchaser with System operation and maintenance instructions, answers to frequently asked questions, troubleshooting tips and service information.

### **ii. SolarGuard**

During the Warranty Period, SolarCity will provide Purchaser, at no additional cost, the SolarGuard Monitoring Service ("SolarGuard"). SolarGuard is a proprietary monitoring system designed and installed by SolarCity that captures and displays historical energy generation data over an Internet connection and consists of hardware located on site and software hosted by SolarCity. The SolarGuard service requires a high speed internet line to operate. Therefore, during the Warranty Period, Purchaser agrees to maintain the communication link between SolarGuard, the System and the Internet. Purchaser agrees to maintain and make available, at Purchaser's cost, a functioning indoor Internet connection with one available wired Ethernet port and standard AC power outlet within eighty (80) feet of the System's AC/DC inverter(s). This communication link must be a 101100 Mbps Ethernet connection that supports common internet protocols (TCP/IP and DHCP).

## **C. MAKING A CLAIM; TRANSFERRING THIS WARRANTY**

### **i. Claims Process**

Purchaser can make a claim by:

- a. Emailing SolarCity at the email address below;
- b. Writing us a letter and sending it overnight mail with a well-known service; or
- c. Sending us a fax at the number below.

### **ii. Transferable Limited Warranty**

SolarCity will accept and honor any valid and properly submitted Warranty claim made during the Warranty Period by any person to whom Purchaser properly transfers the SSA.

## **D. EXCLUSIONS AND DISCLAIMER**

The Warranties set forth in Section 2 (A)(i), (ii) and (iii) do not apply to my repair, replacement or correction required due to the following:

- i. Someone other than SolarCity or its approved service providers installed, removed, re-installed or repaired the System;
- ii. Destruction or damage to the System or its ability to safely produce energy not caused by SolarCity or its approved service providers while servicing the System (e.g., a tree falls on the System);
- iii. Purchaser's failure to perform, or breach of, Purchaser's obligations under the SSA (such as if Purchaser modifies or alters the System);
- iv. Purchaser's breach of this Agreement including being unavailable to provide access or assistance to SolarCity in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- v. any Force Majeure Event (as defined below);
- vi. a power or voltage surge caused by someone other than SolarCity including a grid supply voltage outside of the standard range specified by the Utility;

- vii. any System failure not caused by a System defect (e.g., such as making roof repairs); or
- viii. theft of the System.

This Agreement gives you specific rights, and Purchaser may also have other rights which vary from state to state. This Agreement does not warrant any specific electrical performance of the System, other than that described above. The promises in this warranty are the only express warranties made by SolarCity with respect to the System. SolarCity hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

### **3. ADDITIONAL SERVICES**

#### **(A) SCOPE OF ADDITIONAL SERVICES**

Purchaser agrees that if (i) the System needs any repairs that are not the responsibility of SolarCity under this Agreement, (ii) the System needs to be removed and re-installed to facilitate remodeling of the Facility or (iii) the System is being relocated to another Facility pursuant to the SSA (collectively, items (i)- (iii) are "Additional Services"), Purchaser will have SolarCity, or another similarly qualified service provider, at Purchaser's expense, perform such repairs, removal and reinstallation or relocation on a time and materials basis.

#### **(B) APPROVED SERVICE PROVIDERS**

Purchaser's retention of a third party to perform Additional Services that is not qualified to perform such Additional Services will void the Warranty. To prevent voiding the Warranty, Purchaser should obtain the written consent of SolarCity (which shall not be unreasonable withheld) prior to engaging a third party to perform Additional Services. If Purchaser engages a third party service provider to perform Services without the prior consent of SolarCity, Purchaser does so at the risk that SolarCity will subsequently determine such service provider was not qualified to perform the Additional Services.

#### **(C) PRICING ON ADDITIONAL SERVICES**

Performance of Additional Services by SolarCity will be on a time and materials basis at SolarCity's then current standard rates.

### **4. FORCE MAJEURE**

If SolarCity is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, SolarCity will be excused from whatever performance is affected by the Force Majeure Event, provided that:

1. SolarCity, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
2. SolarCity's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
3. No SolarCity obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by SolarCity's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by SolarCity or under its control.

### **5. LIMITATIONS ON LIABILITY**

#### **(A) NO CONSEQUENTIAL DAMAGES**



In no event shall either party or its agents or subcontractors be liable to the other for indirect, punitive, exemplary, incidental or consequential damages of any nature. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply in such states.

**(B) LIMITATION OF DURATION OF IMPLIED WARRANTIES**

Any implied warranties, including the implied warranties of fitness for particular purpose and merchantability arising under state law, shall in no event extend past this Agreement. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply in such states.

**(C) LIMIT OF LIABILITY**

Notwithstanding any other provision of this Agreement to the contrary, SolarCity's total liability arising out of or relating to this Agreement shall in no event:

- i. For System Failure or Replacement: exceed the total of the Purchaser's payments projected to be made during the Term of the PPA.
- ii. For damages to your Facility, Property or belongings: exceed five million dollars (\$5,000,000.00).

**6. NOTICES**

**TO SOLARCITY:**

SolarCity Corporation  
3055 Clearview Way  
San Mateo, CA 94402  
Attention: Contracts  
Telephone: 650-638-1028  
Facsimile: 650-560-6460  
Email: [contracts@solarcity.com](mailto:contracts@solarcity.com)

**TO Purchaser**

Name: City of Scottsdale  
Address: 9312 N 94<sup>th</sup> Street, Scottsdale, AZ 85258  
Attention: Chris Hassert  
Telephone: (480) 312-5681  
Email: [Chassert@scottsdale.gov](mailto:Chassert@scottsdale.gov)

All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

**7. APPLICABLE LAW / DISPUTE RESOLUTION**

All Agreement claims and controversies under this Agreement shall be resolved according to A.R.S. Title 44-1763 and rules adopted there under including A.R.S. 12-134.

**8. ASSIGNMENT AND TRANSFER OF THIS AGREEMENT**

SolarCity may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of SolarCity's obligations under this Agreement shall be to a party qualified to perform such obligation. SolarCity shall provide notice of any such assignment. This Agreement protects only the party that hosts the System.

Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the SSA.

**9. ENTIRE AGREEMENT: CHANGES**

This Agreement together with Exhibit 1 and other identified Exhibits/Addendums, attached hereto incorporated herein by reference, contains the parties' entire agreement regarding the matters set forth herein (which, for the avoidance of doubt specifically excludes the SSA). SolarCity's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the SSA. No breach of this Agreement shall affect Purchaser's obligations under the SSA. The SSA may be assigned to a third party without assignment of SolarCity's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

City of Scottsdale

SolarCity Corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: W. J. "Jim" Lane

Printed Name: LYNDON RIVE

Title: Mayor

Title: CEO

Date: \_\_\_\_\_

Date: JUNE 9, 2016

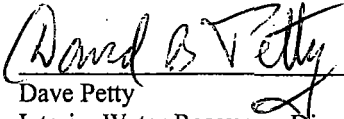
ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

REVIEWED BY:

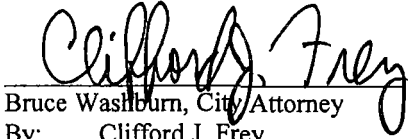
Katie Callaway  
Katie Callaway  
Risk Management Director

WATER RESOURCES



Dave Petty  
Interim Water Resources Director

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT 1**

1. **ARIZONA LAW.** The law of Arizona applies to this Agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona, Arizona Revised Statutes (A.R.S. §) 15-213, and its implementing rules.
2. **CANCELLATION FOR CONFLICT OF INTEREST.** Per A.R.S. § 38-511 the City may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the City is, or becomes at any time while the Agreement or an extension the Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when SolarCity receives written notice of the cancellation unless the notice specifies a later time.
3. **Contract Claims.** All Agreement claims and controversies under this Agreement shall be resolved according to A.R.S. Title 15-213 and Scottsdale City Code, Section 26A.
4. **Contractor's Employment Eligibility.** By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.
  - a. The City may request verification of compliance from any contractor or subcontractor performing work under this contract. The City reserves the right to confirm compliance in accordance with applicable laws.
  - b. Should the City suspect or find that the contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.
5. **Scrutinized Business Operations.** Per A.R.S. 35-391 and 35-393, the City is prohibited from purchasing from a company with scrutinized business operations in Sudan or Iran.
6. **Terrorism Country Divestments.** Per A.R.S. 35-392, the City is prohibited from purchasing from a company that is in violation of the Export Administration Act.
7. **Licenses and Permits:** SolarCity and its sub-contractors shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by SolarCity, at its sole expense.
8. **Professional Electrical Engineer.** A professional electrical engineer, registered in the State of Arizona, must provide sealed electrical plans and specifications.
9. **Professional Structural Engineer.** A professional structural engineer, registered in the state of Arizona, must provide sealed structural plans and calculations for proposed roof mounted and ground mounted installations relative to the applicable live and dead loads in accordance with the Scottsdale Building Code.
10. The City is an equal opportunity, affirmative action employer. SolarCity hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, religion, color, national origin, ancestry, physical or mental disability, age, veteran status, marital status, sex, gender, sexual orientation or gender identification. SolarCity agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.
11. SolarCity expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. SolarCity further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
12. SolarCity agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all

applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. SolarCity acknowledges that a breach of this warranty is a material breach of this Contract and SolarCity is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of SolarCity. SolarCity hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

13. SolarCity will comply with all security clearance requirements in place for personnel access to the South Water Treatment Plant facility that may include fingerprint processing and background checks.

14. SolarCity shall complete a video/photo inventory of the selected facilities within the project limits and provide a copy of the video or photos to the City prior to the start of construction. SolarCity will restore all materials and facilities in "like kind" and will be responsible for repairing any damage to facilities that are within the project limits or were disturbed or damaged as a result of the contractor's work.

15. SolarCity shall be responsible for all costs involved in the development and implementation of a comprehensive monitoring system that will track technical and financial information for each PV system installed.

16. All components of the PV system shall be approved, listed, and labeled by an acceptable third party and meet the requirements of the Scottsdale Building Code and Scottsdale Electrical Code.

17. Any and all required permits, easements and associated costs for this project are the responsibility of SolarCity.



## Demand Logic Guarantee

This Demand Logic Guarantee (this "**Guarantee**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:		Seller:	
Name and Address	City of Scottsdale 9379 East San Salvador Drive Scottsdale, AZ 85258 Attention: Chris Hassert, Water Resources Planning & Engineering Director	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(480) 312-5681	Phone	(650) 638-1028
E-mail	Chassert@scottsdale.gov	E-mail	contracts@solarcity.com
Facility Ownership	Purchaser owns the Facility		
Tax Status	Non-profit		
Project Name	City of Scottsdale - Water Campus		

This Guarantee sets forth the terms and conditions of a guarantee provided by Seller in connection with the Energy Storage Services provided under Exhibit 9 of the Solar Services Agreement by and between Seller and Purchaser dated the same date as this Guarantee (the "**Agreement**"). All capitalized terms used herein shall have the meanings given such terms in the Agreement. Any reference to the Agreement means the Agreement as of the date hereof and as amended or restated in any amendments or restatements of the Agreement to which Seller is a party. The term of this Guarantee ("**Guarantee Term**") shall commence on the first day of the calendar month following the Effective Date and remain in place until the expiration of the Storage Services Term.

1. **Guaranteed Annual Reduction.** Commencing at the start of the Guarantee Term, for each twelve (12) month calculation period therein (each an "**Guarantee Year**"), Seller guarantees to Purchaser that the Facility's aggregate load reductions, as reflected by the System monitoring system and calculated in accordance with the methodology set forth on Schedule 1 (the "**Actual Reduction**"), will be at least as follows (each, a "**Guaranteed Annual Reduction**"):

Guarantee Year	Guaranteed Annual Reduction
1	8940 kW
2	8940 kW
3	8940 kW
4	8940 kW
5	8940 kW
6	8940 kW
7	8940 kW
8	8940 kW

9	8940 kW
10	8940 kW
11	8940 kW
12	8940 kW
13	8940 kW
14	8940 kW
15	8940 kW
16	8940 kW
17	8940 kW
18	8940 kW
19	8940 kW
20	8940 kW

Upon conclusion of each Guarantee Year, Seller shall aggregate the Actual Reductions from such year to calculate the “**Actual Annual Reduction**”.

Seller shall pay Purchaser \$17.50/ kW (or kVA, as applicable) (the “**Guaranteed Demand Rate**”) for each kW (or kVA, as applicable) that the Actual Annual Reduction is less than the Guaranteed Annual Reduction in a Guarantee Year (the “**Guarantee Payment**”). Seller shall pay total Guarantee Payment, if any is payable, as a lump sum upon the later to occur of (1) thirty (30) days after the end of the applicable Guarantee Year, and (2) thirty (30) days after Seller’s completion of the utility billing rectification described in Section 2 below and Schedule 1.

**2. Utility Billing Period Rectification.** The Parties acknowledge that the Utility invoice cycle is subject to slight deviations from the calendar month (e.g. the Utility invoice for the month of February may be from January 28<sup>th</sup> to March 3<sup>rd</sup>). Seller shall track ongoing performance based on the calendar month, and within sixty (60) days after the end of each Guarantee Year Seller shall perform the calculations set forth in Schedule 1 to match the Utility invoicing cycles. Seller’s obligation to match the Guarantee Payment to the Purchaser’s Utility bills is subject to:

- 1) Purchaser’s provision of an electronic copy of the preceding twelve (12) months of Utility invoices no later than thirty (30) days after Seller’s request.
- 2) Purchaser’s provision of an electronic copy of the preceding twelve (12) months of Utility invoices within thirty (30) days after the end of the Guarantee Year; and
- 3) Purchaser’s delivery of notice to Seller of any changes to Purchaser’s Utility invoicing cycle within thirty (30) days after receipt of such invoice.

**3. Exclusions.** This Demand Reduction Guarantee shall not apply in the following circumstances:

- a. A Person other than Seller or its approved service provider installs, removes, re-installs or repairs the Storage Unit.
- b. Destruction, damage to or loss of the Storage Unit or reduction of its ability to safely store and discharge energy not caused by Seller or its approved service providers.
- c. Purchaser fails to perform, or breaches any of Purchaser’s obligations under the Agreement.
- d. Any Force Majeure event occurs.

4. **NO OTHER WARRANTY.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS GUARANTEE, NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY UNDER THIS GUARANTEE.

5. **Incorporation of Miscellaneous Provisions.** Sections 18 (Force Majeure), Section 19 (Assignment and Financing) and sub-sections (a) through (n) inclusive of Section 22 (General Provisions) of Exhibit 3 the Agreement and any Sections referenced therein are incorporated into this Guarantee as if any reference therein to "Agreement" were to this Guarantee and any reference to "Parties" were to the Parties to this Guarantee.

6. **Loss of Monitoring Data.** The Parties acknowledge that monitoring may fail without the fault of either Party, and that, as a result, there may be a loss of data required to quantify the Actual Reduction for each calendar month during the Guarantee Year, and by extension, the Guaranteed Annual Reduction. In the event that monitoring data is incomplete for any calendar month, Seller will base the calculations outlined in Schedule 1 on the data available for such month. If the Purchaser believes that the Actual Monthly Reduction (as defined in Schedule 1) occurred during the monitoring outage, and that as a result, the Actual Reduction is lower than calculated by SolarCity, then SolarCity will adjust the calculation as shown in Schedule 1, Section 4.

7. **Storage Unit Replacement Period.** The Parties acknowledge that it will be necessary for Seller to replace the Storage Unit at some point during the Guarantee Term, due to normal wear and tear, and that the estimated timing of this replacement is upon the 10<sup>th</sup> Anniversary of the Effective Date. Seller shall notify Purchaser of the intention to replace the Storage Unit at least thirty (30) days prior to the intended replacement date. Seller's obligations under this Demand Logic Guarantee shall be waived for up to thirty (30) calendar days while the Storage Unit is being replaced.

8. **Maintenance of Minimum Load.** Purchaser agrees that it will maintain a minimum Max Gross Load in each calendar month equal to, or greater than, 1/12<sup>th</sup> of the Guaranteed Annual Reduction (such fraction, the "**Average Monthly Reduction**"). If in any given calendar month the Max Gross Load is less than Average Monthly Reduction, then for the purposes of the calculation of the Guaranteed Annual Reduction, the reduction for the month in question will be calculated as shown in Schedule 1, Section 3.

9. **Entire Agreement, Changes.** This Guarantee contains the Parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Guarantee are separate and distinct from the obligations of the Seller or its assigns under the Agreement. No breach of this Guarantee shall affect Purchaser's obligations under the Agreement. The Agreement may be assigned to a third party without assignment of Seller's obligations under this Guarantee. Any change to this Guarantee must be in writing and signed by both Parties. If any portion of this Guarantee is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Guarantee shall survive.

City of Scottsdale

SolarCity Corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: W. J. "Jim" Lane

Printed Name: LYNDON RIVE

Title: Mayor

Title: CEO

Date: \_\_\_\_\_

Date: JUNE 9, 2016



ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

REVIEWED BY:

\_\_\_\_\_  
*Katie Callaway*  
Katie Callaway  
Risk Management Director

WATER RESOURCES

\_\_\_\_\_  
*Dave Petty*  
Dave Petty  
Interim Water Resources Director

APPROVED AS TO FORM:

\_\_\_\_\_  
*Clifford J. Frey*  
Bruce Westburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

## Schedule 1 to

## Methodology for Guarantee Calculations

Seller shall install and maintain a meter ("Meter") for each of: (1) Purchaser's energy and power usage at the Facility ("Meter A"), (2) energy and power flows into and out of the Storage Unit ("Meter B"), and (3) energy and power generated by the System ("Meter C"), as applicable.

## Section 1: Methodology for calculating Actual Reduction

Step 1: Identify the load during fifteen (15) minute interval when the sum of Meter A + Meter B + Meter C is at the highest point during the previous month (the "Max Gross Load").

Step 2: Identify the highest load during a single fifteen (15) minute interval for Meter A for the previous month (the "Max Net Load").

Step 3: Subtract the Max Net Load from the Max Gross Load. This value will equal the "Actual Reduction" for the month in question.

Step 4: Summate the Actual Reductions for the preceding 12 months to arrive at the "Actual Annual Reduction"

Example

Assume the Max Gross Load is 700kW, based on the following highest point readings from the meters for the previous month:

Meter	Power reading (kW)
A	400
B	100
C	200

*Max Gross Load                      700kW*

For the same month in question, the highest single fifteen (15) minute interval for Meter A for the previous month is 500kW:

Meter	Power reading (kW)
A	500

*Max Net Load                      500kW*

The Actual Reduction would be calculated as follows:

Value	Power reading (kW)
Max Gross Load	700
<i>minus Max Net Load</i>	500

*Actual Reduction                      200kW*

**Schedule 1**

Assuming the following Actual Reductions by month, the Actual Annual Reduction will be calculated as follows:

Month	Actual Reduction
January	200 kW
February	200 kW
March	200 kW
April	200 kW
May	200 kW
June	200 kW
July	200 kW
August	200 kW
September	200 kW
October	200 kW
November	200 kW
December	200 kW
<b><i>Actual Annual Reduction</i></b>	2400 kW

**Section 2: Methodology for performing the Utility Billing Period Rectification**

**Step 1:** Purchaser shall provide electronic copies of the Utility bills for the preceding 12 months within 30 days after the conclusion of the Guarantee Year.

**Step 2:** Seller shall input the invoice cycle dates from the Utility bills for the preceding 12 months into the System monitoring system.

**Step 3:** Seller shall then re-calculate the Actual Reduction for each calendar month during the Guarantee Year based on the updated dates input into the System monitoring system

**Step 4:** Seller shall re-calculate the Actual Annual Reduction based on the Actual Reductions calculated in Step 3.

**Step 5:** If the Actual Annual Reduction is less than the Guaranteed Annual Reduction than Seller shall make payment to Purchaser as outlined in Section 1.

**Section 3: Maintenance of Minimum Load**

Example: The Guaranteed Annual Reduction is 2400 kW, so the Average Monthly Reduction is equal to 200 kW.

In a given month, the Max Gross Load is equal to 180 kW, and the Max Net Load is equal to 30 kW. In this instance, the Actual Reduction will be calculated as follows:

$$\text{Actual Reduction} = [\text{Max Gross Load} - \text{Max Net Load}] + [\text{Average Monthly Reduction} - \text{Gross Max Load}]$$

$$\text{Actual Reduction} = [180 - 30] + [200 - 180]$$

**Schedule 1**

$$\text{Actual Reduction} = 150 + 20$$

$$\text{Actual Reduction} = 170 \text{ kW}$$

**Section 4: Loss of Monitoring Data**

Step 1: Seller will calculate a modified Max Gross Load figure (based on the available monitoring data).

Step 2: The Actual Reduction equals the modified Max Gross Load – Max Net Load (as shown on the utility bill).

**Example:**

Max Gross Load (based on available monitoring data) = 200 kW

Max Net Load (as shown on customer utility bill) = 100 kW

$$\text{Actual Reduction} = 200 \text{ kW} - 100 \text{ kW} = 100 \text{ kW}$$



Environmental Quality Advisory Board  
Office of Environmental Initiatives  
City of Scottsdale  
7447 E Indian School Rd STE 105  
Scottsdale, AZ 85251

Staff Contact: Tim Conner  
Email [tconner@scottsdaleaz.gov](mailto:tconner@scottsdaleaz.gov)  
PHONE 480-312-7833  
FAX 480-312-7314  
WEB [www.ScottsdaleAZ.gov](http://www.ScottsdaleAZ.gov)

## Memorandum

TO: Mayor and City Council  
FROM: Environmental Quality Advisory Board (EQAB)  
DATE: June 16, 2016  
RE: **Recommendation for Solar PV Project at the Scottsdale Water Campus**

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The Environmental Quality Advisory Board (EQAB) recommends approval of the solar services agreement and contract award to SolarCity for a 2.3 megawatt PV solar system at the Scottsdale Water Campus.

### Background

The Scottsdale Water Campus is a 145 acre complex housing the Water Reclamation facility and the CAP Potable Water Treatment Plant. The Campus is the City's largest energy consumer.

Scottsdale Water is interested in entering into a long-term solar services agreement for a 2.3 megawatt (DC power) PV system to replace approximately 10% of the current power use at the Water Campus. The system will be equipped with battery storage used to control power demand spikes and reduce demand charges by the electric provider.

Under the terms of the agreement, SolarCity will finance, design, construct, operate and maintain the solar system for twenty years. Scottsdale Water will pay a pre-determined rate per kWh and an annual rate for the battery storage infrastructure. The combined solar-battery package will translate into long-term energy savings using renewable power.

### Recommendation

The successful bidder, SolarCity, is a leader in Arizona's solar integration market and one of the largest solar installers in North America. They are the most experienced project financiers in the industry with ample capital available to support the City's solar objectives.

EQAB unanimously recommends awarding the solar services agreement and contract to SolarCity for the financing, design, construction, operation and maintenance of the proposed 2.3 megawatt PV solar system at the Water Campus/CAP Facility for long-term energy cost savings and reduction of greenhouse gas emissions.

If you have questions regarding this recommendation, please contact Anthony Floyd in Scottsdale's Office of Environmental Initiatives.

Respectfully,

A handwritten signature in cursive script, appearing to read "Alisa McMahon".

Alisa McMahon, Chairperson

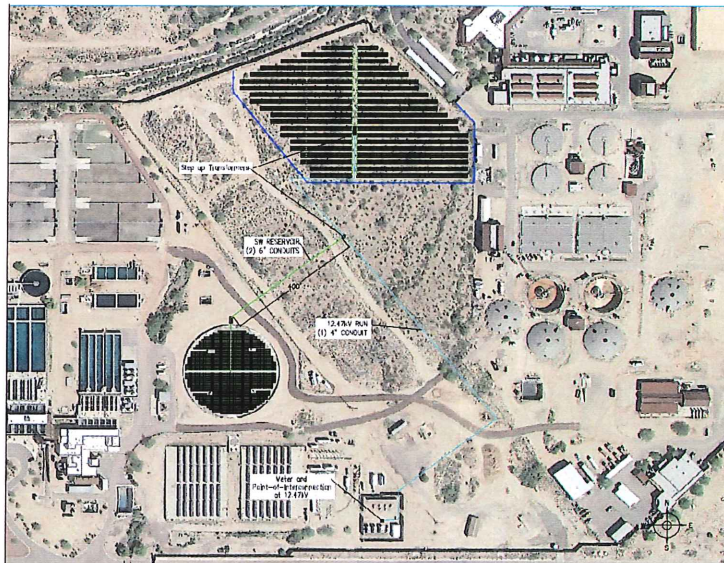
Environmental Quality Advisory Board

## Item 14

### Project Description

- Solar Services Agreement (SSA) with SolarCity for 2.3MW of solar infrastructure with battery storage
- 20-year agreement
- No capital required by Scottsdale Water
- SolarCity finances, designs, builds, operates and maintains system

### Project Location – Scottsdale Water Campus



## Project Benefits

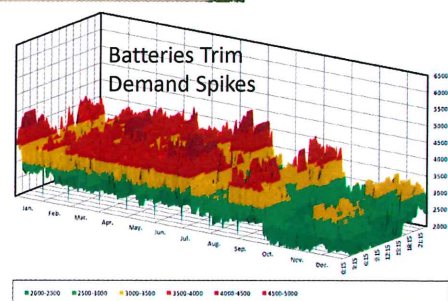
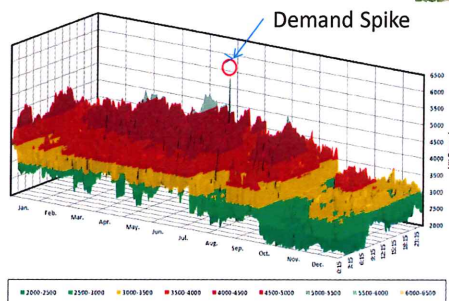
- Estimated \$1.4M energy savings over 20-year agreement
- Solar/Battery combination reduces demand charges on electric bill
- Project will offset 10% of electric grid supplied power to Campus with clean renewable energy
- Battery storage will serve as an additional power back-up in the event of a regional power outage

## Battery Storage Benefits Illustrated

- Trim Peak Demand
- Reduce Demand Charges
- Lower Bills



TESLA  
ENERGY



Questions?