



DATE: June 6, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **ASSIGNMENT OF THE POWER PURCHASE AGREEMENT (PPA) AND THE PROPERTY LEASE AGREEMENT (PLA) FROM SUNEDISON TO SOLAR STAR OCEANSIDE, LLC, FOR THE INSTALLATION AND OPERATION OF A SOLAR PHOTO-VOLTAIC SYSTEM, AND USE OF APPROXIMATELY 10 ACRES OF CITY-OWNED LAND; AMENDMENT 2 TO THE PPA AND AMENDMENT 2 TO THE PLA WITH SOLAR STAR OCEANSIDE, LLC, TO MODIFY THE TERMS AND CONDITIONS AND UPDATE THE PPA WITH THE NEW SOLAR ELECTRICITY PRICING, ANNUAL PRODUCTION AMOUNTS, AND EARLY TERMINATION FEES**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve the assignment of the Power Purchase Agreement (PPA) and the Property Lease Agreement (PLA) from SunEdison to Solar Star Oceanside, LLC, for the installation and operation of a solar photo-voltaic system; approve Amendment 2 to the PPA and Amendment 2 to the PLA with Solar Star Oceanside, LLC, of Richmond, CA, to modify the terms and conditions and update the PPA with the new solar electricity pricing, annual production amounts, and early termination fees; and authorize the City Manager to execute the assignments and amendments.

BACKGROUND

The proposed project will produce 1 megawatt of alternative energy for the San Luis Rey Water Reclamation facility. The goal was to enter into a Power Purchase Agreement (PPA) so the City will have a secure alternative energy source that will be below the cost the City would spend for that same amount of energy purchased from San Diego Gas & Electric (SDG&E) over the life of the PPA. In addition to this endeavor, the City also gains and owns Renewable Energy Credits. The solar-voltaic system will offset 1,339 metric tons of carbon dioxide annually, equivalent to greenhouse gas emissions from 256 passenger vehicles.

Staff solicited Requests for Proposals in February of 2010 with three proposals received. City Council awarded the power purchase and site lease agreement to SunEdison on August 18, 2010. SunEdison, on behalf of the City, submitted an

application to secure California Solar Incentives and paid the required \$20,000 application fee.

ANALYSIS

To date, SunEdison has been unable to complete the project as planned and staff began negotiations with replacement solar providers that would be able and willing to take over the project from SunEdison as well as take over assignment of the Solar Incentives, which make the project financially viable. In order to do so, staff negotiated a revised completion date for the incentives with the California Center for Sustainable Energy. SunEdison is willing to assign the incentives to a replacement solar provider, provided they are reimbursed the application fee of \$20,000. As proposed, the City would pay SunEdison this application fee and assign it to the replacement provider. As a condition of approval for the incentives, the City must submit a Proof of Project Milestone by June 14, 2012, in the form of a signed contract with an alternative provider.

In May 2012, staff contacted alternative providers and asked that they submit a proposal for the project. Three proposals were received: Solar Star Oceanside, LLC, SolarCity and Borrego Solar. Staff had a solar energy analyst evaluate the three solar photovoltaic proposals for qualifications, electrical cost savings, and performance. Solar Star Oceanside, LLC of Richmond, California, ranked highest among all proposers, based on pricing, financial performance, and ownership. Solar Star Oceanside, LLC is able to build the system within the time constraints and is willing to do the work. The cumulative nominal dollar savings over a 20-year period are \$1,651,377 or \$82,569 annually. The savings under the SunEdison contract were estimated to be approximately \$1,195,593 over 20 years.

Staff has already started environmental work in anticipation of the contract award and to ensure that the strict timelines are met. Based on the current site conditions, staff anticipates adoption of a Mitigated Negative Declaration (MND) in compliance with all California Environmental Quality Act requirements for the proposed solar energy project. A space utilization plan has been reviewed carefully, confirming that with construction of the proposed solar energy project, there is also sufficient space to accommodate any future expansion of the treatment plant.

A community forum was also held on June 9, 2010. Staff sent approximately 450 mailers to the surrounding property owners and issued a press release. The community forum had 10 attendees including 2 members of the Utilities Commission. The majority of the public questions were related to the proposed project's capacity, operations and maintenance, and security issues. All questions were answered by the representatives from the then-selected solar provider, SunEdison, as well as City staff.

Section 4217.12 of the California Government Code authorizes public agencies to enter into energy service contracts on such terms as their governing bodies determine are in the best interests of the agency. To do so, a determination must be made after a public hearing that the anticipated cost to the agency for energy conservation services under the energy services contract would be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of those purchases. In lieu of utilizing a competitive hard bid process to select

the contractor to perform the energy services, Government Code section 4217.10 *et seq.* authorizes the use of an informal request for proposals process. A power purchase agreement is a form of “energy services contract” eligible for the alternative, informal Government Code procurement process.

This action is consistent with the Council goal of developing plans to promote alternative energy use and also meets the Water Utility Department’s strategic goal to explore and expand renewables use.

FISCAL IMPACT

The Fiscal Year 11-12 proposed budget for the Miscellaneous Sewer Projects (800812722.5325) fund is \$950,818; the specialized legal review of the PPA is approximately \$5,000-15,000 and the application reimbursement cost is \$20,000. The potential total project expenditure to the Water Utilities Department is approximately \$35,000. Therefore, adequate funds are available.

INSURANCE REQUIREMENTS

The City’s standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff’s recommendation at its regularly scheduled meeting on June 15, 2010.

CITY ATTORNEY’S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

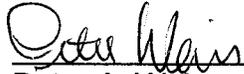
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PREPARED BY:



Jason Dafforn
Acting Water Utilities Division Manager

SUBMITTED BY:



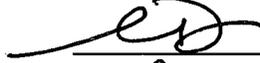
Peter A. Weiss
City Manager

Exhibit A – Assignment
Exhibit B – Amendment
Exhibit C – Site Map

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Cari Dale, Water Utilities Director
Teri Ferro, Financial Services Director







ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement"), dated as of ____ ____, 2012 (the "Effective Date"), is made by and among City of Oceanside ("Consenting Party"), SunEdison Origination1, LLC ("Assignor"), and Solar Star Oceanside, LLC ("Assignee") (each, a "Party," and collectively, the "Parties").

WHEREAS, Assignor and Consenting Party are parties to that certain Solar Energy Power Purchase Agreement, dated as of August 18, 2010 (the "PPA"); and

WHEREAS, concurrently with the execution of the PPA, Assignor and Consenting Party have entered into that certain Property Lease Agreement For the Lease of Real Property Located at 3950 North River Road, Oceanside, CA 92050 (the "Property Lease Agreement").

WHEREAS, Assignor desires to fully assign and delegate to Assignee all its rights, title, benefit, privileges, interest and obligations in and to the PPA and the Property Lease Agreement, and Assignee desires to accept such assignment and delegation and to assume all such rights, title, benefit, privileges, interest, liabilities and obligations, in accordance with the terms hereof;

WHEREAS, the Assignee and the Consenting Party desire and agree to make certain modifications to the PPA and the Property Lease Agreement in conjunction with its assignment; and

WHEREAS, Consenting Party desires to consent to this Agreement and the modifications to the PPA and the Property Lease Agreement set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Defined Terms.** Unless otherwise defined herein, capitalized terms shall have the meanings given to them in the PPA or the Property Lease Agreement, as applicable.

2. **Modifications.**

(a) Effective immediately following the assignment of the PPA and Property Lease Agreement in accordance with Section 3, the PPA is hereby amended in accordance with the terms and conditions set forth in Schedule 1 attached hereto.

(b) Effective immediately following the assignment of the PPA and Property Lease Agreement in accordance with Section 3, the Property Lease Agreement is hereby amended in accordance with the terms and conditions set forth in Schedule 2 attached hereto.

3. **Assignment.** Effective as of the Effective Date, Assignor hereby assigns and delegates to Assignee all of its right, title, benefit, privileges, interest, liabilities and obligations in and to the PPA and the Property Lease Agreement, each as modified pursuant to Section 2 above, subject to the terms set forth below. As consideration for such assignment, Consenting

Party shall pay to Assignor within ten (10) days of the Effective Date, an amount equal to [\$20,000], representing the reservation fee previously paid by Assignee in connection with this project. If such payment is not received by Assignor on or before such date, this Agreement shall be *void abinitio*, and the PPA and Property Lease Agreement shall be deemed terminated without any past or future liability to Assignor or any of its affiliates.

4. **Assumption.** Effective as of the Effective Date, Assignee hereby accepts such assignment from Assignor and assumes and agrees to observe and perform all of Assignor's duties, obligations, terms, provisions and covenants in and to the PPA and the Property Lease Agreement, each as modified pursuant to Section 2 above, and to assume, pay and discharge all of Assignor's liabilities in connection with the PPA and the Property Lease Agreement, each as modified pursuant to Section 2 above, to the extent occurring, arising or accruing out of the period from and after the Effective Date (the "Assumed Liabilities"). Notwithstanding anything to the contrary herein or in the PPA or the Property Lease Agreement, Assignee does not assume, and hereby specifically disclaims, any and all liabilities, claims, damages or expenses of any kind occurring, arising or accruing in connection with the PPA and the Property Lease Agreement prior to or after the Effective Date. Each of Consenting Party and Assignee agrees to waive any existing or future claim that either it or any of its affiliates may have against Assignor arising under or related to the PPA or the Property Lease Agreement.

5. **Acknowledgement.** Consenting Party acknowledges that as of the Effective Date, no obligations or liabilities have accrued or are outstanding in connection with the PPA or the Property Lease Agreement and the PPA and the Property Lease hereunder shall be assumed by Assignee without any prior liabilities or obligations.

6. **Acceptance.** Effective as of the Effective Date, Consenting Party hereby: (1) consents to Assignor's assignment of all of its right, title, benefit, privileges, interest and obligations in and to the PPA and the Property Lease Agreement, each as modified pursuant to Section 2 above, to Assignee; (2) accepts Assignee's assumption of the duties, obligations, terms, provisions and covenants of Assignor in and to the PPA and the Property Lease Agreement, as modified pursuant to Section 2 above, occurring, arising or accruing out of the period from and after the Effective Date and subject to the acknowledgement set forth in Section 5 above; and, (3) fully and finally releases and discharges the Assignor from any and all of its obligations and/or liabilities under the PPA and the Property Site Lease Agreement.

7. **Memorandum of Lease/Integration of Amendments.** Assignee and Consenting Party hereby acknowledge and agree that Assignee shall have the right, at its discretion, to require the Consenting Party to re-execute the Property Lease Agreement as of the Effective Date hereof and as amended pursuant to the terms and conditions hereof evidencing the Assignee as the lessee thereof and file a memorandum of lease for such newly executed Property Lease Agreement in the Official Records of the County of San Diego as contemplated in amended Property Lease Agreement.

8. **Further Actions Necessary.** Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of another Party hereto, such further instruments of transfer and assignment and to take such other action as such other Party may

reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

9. Representations and Warranties. Consenting Party represents and warrants to Assignor and Assignee, as of the Effective Date:

(a) Organization; Power and Authority. Consenting Party is a municipal corporation organized and existing under the laws of the State of California, and has the power and authority to transact the business it transacts and proposes to transact, to execute this Agreement, the PPA and the Property Lease Agreement and to perform its obligations hereunder and thereunder.

(b) Authorizations, Enforceability. This Agreement, PPA and the Property Lease Agreement have been duly authorized, executed and delivered by Consenting Party and do not require any permits, approvals, resolutions, filings with, or consents of any entity or person (including any governmental authority) that have not previously been obtained or made. The PPA and the Property Lease Agreement constitute a legal, valid and binding obligation of Consenting Party enforceable against Consenting Party in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No Default or Force Majeure Event. Consenting Party is not in breach of any of its obligations under the PPA or the Property Lease Agreement and, to Consenting Party's knowledge, Assignor is not in breach of any of its obligations under the PPA or the Property Lease Agreement. To Consenting Party's knowledge, no Force Majeure Event exists under the PPA or the Property Lease Agreement.

(d) No Adverse Proceedings. There is no litigation, action, suit, proceeding or investigation pending or (to Consenting Party's knowledge) threatened against Consenting Party or Assignor before or by any court, administrative agency, arbitrator or governmental authority, body or agency that, if adversely determined, individually or in the aggregate, (a) could materially adversely affect the performance by Consenting Party of its obligations under the PPA or the Property Lease Agreement or that could modify or otherwise adversely affect any required approvals, filings, resolution or consents that have previously been obtained or made, (b) could have a material adverse effect on the condition (financial or otherwise), business or operations of Consenting Party or (c) questions the validity, binding effect or enforceability of the PPA or the Property Lease Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated thereby.

(e) No Violations. The execution, delivery and performance by Consenting Party of this Agreement, the PPA and the Property Lease Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its

property is bound, or of any resolution, license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, other than any such violation, breach or default could not reasonably be expected to have a material adverse effect on the rights and benefits of Assignee or Consenting Party's ability to perform its obligations, under, in respect of, or in connection with, the PPA or the Property Lease Agreement.

(f) No Other Agreements. The PPA and the Property Lease Agreement are the only agreements between Consenting Party and Assignor with respect to the System and the only agreement entered into by Consenting Party in connection with the System.

Each of the foregoing representations and warranties will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by the PPA and the Property Lease Agreement.

10. Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the applicable laws of the State of California, without regard to the application of such state's laws relating to conflicts of laws.

11. Notices. From and after the Effective Date, all notices with respect to this Agreement shall be given and delivered to:

Assignor: SunEdison Origination1, LLC
12500 Baltimore Ave.
Beltsville, MD 20706
Attn: VP of Project Finance
Phone: 443-909-7324
Fax: 443-909-7185

Assignee: Solar Star Oceanside, LLC.
1414 Harbour Way South,
Richmond, CA 94804

Consenting Party:

City of Oceanside

300 North Coast Highway

Oceanside, CA 92054

Attn: Water Utilities Director

12. **Assignments and Binding Effect.** This Agreement shall be irrevocable and shall inure to the benefit of and shall be binding upon Consenting Party, Assignor and Assignee and their respective successors, transferees and permitted assigns.

13. **Counterparts.** The Parties agree that this Agreement may be executed in counterparts and that, when taken together, such counterparts constitute but one agreement.

IN WITNESS WHEREOF, the Parties have executed this Assignment and Assumption Agreement as of the day and year first above written.

SUNEDISON ORIGINATION1, LLC

By: _____

Name:

Title:

CITY OF OCEANSIDE

By: _____

Name:

Title:

SOLAR STAR OCEANSIDE, LLC

By: _____

Name:

Title:

CITY OF OCEANSIDE
AMENDMENT 2 TO
POWER PURCHASE AGREEMENT

**PROJECT: SAN LUIS REY WATER RECLAMATION FACILITY
SOLAR PHOTOVOLTAIC SYSTEM**

THIS AMENDMENT TO POWER PURCHASE AGREEMENT (hereinafter "Amendment") is made and entered this ____ day of _____ 2012, by and between the City of Oceanside, a municipal corporation, hereinafter designated as "HOST CUSTOMER", and SOLAR STAR OCEANSIDE, LLC, hereinafter designated as "SYSTEM OWNER".

RECITALS

WHEREAS, HOST CUSTOMER and SYSTEM OWNER are the parties to that certain Power Purchase Agreement and Property Lease Agreement dated August 18, 2010, including assignment dated June 6, 2012 hereinafter referred to as the "Agreement", wherein SYSTEM OWNER agreed to provide certain services to the HOST CUSTOMER set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to the following sections:

AMENDMENT

The PPA is hereby amended as follows:

1. The definition of Effective Date set forth in the preamble of the PPA is hereby amended by deleting the words "18th day of August, 2010" and replacing such words with the following: "6th day of June, 2012".
2. The second Recital of the PPA is hereby deleted in its entirety and replaced with the following

"WHEREAS, the City Council of the Host Customer has already made those findings required by Section 4217.12 of the Government Code that: (1) The anticipated cost to the Host Customer for electrical energy services provided by the solar panel system under this Agreement, as amended, will be less than the anticipated marginal cost to the Host Customer of electrical energy that would have been consumed by the Host Customer in the absence of those purchases and (2) The difference, if any, between the fair rental value for the real property (the "Premises") subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under this Agreement, as amended; and

WHEREAS, so long as any changes to the pricing offered under this Agreement remains less than the pricing set forth in the original Council findings, such energy cost saving determinations made under the Government Code shall remain applicable and appropriate; and”

3. Section 4.2 is hereby amended by replacing the words “[Reserved.]” with the following:

“System Design Package. Exhibit C sets forth the specific assumptions and qualifications made by the System Owner regarding the condition of the Premises, electrical conditions, and System attributes for the System under this Agreement, along with any known actual conditions for the specific Premises and System. If, (i) prior to the commencement of construction, during System Owner’s due diligence, design and pre-construction phase, System Owner determines that the construction and installation of the System is required to deviate from the assumptions and qualifications set forth in Exhibit C and such change may result in a modification to the Solar Electricity Price, or (ii) after the commencement of construction, the costs of the construction and installation of the System are increased or are required to deviate from the assumptions or qualifications set forth in Exhibit C due to (a) material changes directed by Host Customer or its authorized designee (b) material changes required by a governmental authority or local utility as a condition of regulatory approval; or (c) latent sub-surface conditions that could not reasonably be foreseen by System Owner’s due diligence (excluding soil conditions or other project site conditions which could have been identified through System Owner’s geotechnical review), System Owner will notify the Host Customer as soon as practicable, providing a detailed description of the nature of the change associated with such deviation from the assumptions and qualifications set forth in Exhibit C as well as a detailed written quote for any cost modification (“Change Order Request”). Host Customer will then, in its sole and absolute discretion, have the options of: (i) authorizing and paying the amount of the Change Order Request at the time the cost is incurred and billed to the Host Customer, (ii) authorizing and paying the cost of the Change Order Request over the Term through a calculated increase in the Solar Electricity Price equal to \$0.00093/kWh for every \$25,000 of the Change Order Request, or (iii) elect not to authorize and pay for, or otherwise assume the cost of, the Change Order Request. If Host Customer elects not to authorize the Change Order Request, Host Customer shall notify System Owner thereof in writing within five (5) business days from receipt of the relevant Change Order Request. Within fifteen (15) business days from the receipt of Host Customer’s decision to deny System Owner’s Change Order Request, System Owner shall indicate to Host Customer in writing that either: (1) System Owner shall construct the Project (modified as may be mutually agreed by the Parties) at the Solar Electricity Price set forth in the Agreement; or (2) System Owner thereby terminates this Agreement. If System Owner does not notify Host Customer in writing within such fifteen (15) business days of its decision to either proceed with or terminate the Agreement, Host Customer may terminate this Agreement. In the event that either Party terminates this Agreement pursuant to this Section, such termination shall be without any liability by either Party to the other Party for any costs incurred to the date of such termination, including any

costs for the pre-purchase of materials or testing and expert fees, regardless if authorized or consented to by the other Party prior to the date of such termination.”

4. Section 4.11.2 of the PPA is hereby amended by deleting the first sentence thereof and replacing such sentence with the following:

“4.11.2. Within seven (7) calendar days of the release of that security provided under Section 4.11.1 above, and prior to the Commencement of the Service Term, in order to secure System Owner’s obligation to remove the System from the Premises upon the termination of the Service Term, System Owner shall provide to Host Customer a security in the form, at System Owner’s election, of a construction bond, letter of credit, cash deposit or other form of credit support reasonably acceptable to Host Customer, in an amount not to exceed \$100,000.00.”

5. Section 5.7 of the PPA is hereby amended by deleting the following sentence:

“All Insurance Policies shall contain a provision that such policies shall not be cancelled or terminated without thirty (30) days prior notice from the insurance company to the other Party.”

6. Section 9.4.1 of the PPA is hereby amended by deleting the words “and at least annually thereafter” from the first sentence thereof and replacing such words with the following:

“and thereafter as may be required pursuant to manufacturers’ recommendations”

7. Section 9.4.1 of the PPA is hereby further amended by deleting the word “annual” from the last sentence thereof.

8. Section 10 of the PPA is hereby amended by deleting the sentence “If Host Customer does not obtain all required environmental approvals by March 30, 2011, Host Customer may terminate this Agreement by written notice to System Owner” and replacing such sentence with the following:

“If Host Customer does not obtain all required environmental approvals by August 1, 2012, either Host Customer or System Owner may terminate this Agreement by written notice to the other Party; provided, that if Host Customer or System Owner elect to terminate this Agreement pursuant to this Section 10, Host Customer agrees to reimburse System Owner for its reasonable documented out of pocket costs and expenses incurred by System Owner in connection with the topography report and the civil and electrical engineering associated with the System and/or the Site, up to a not-to-exceed aggregate amount of \$35,000.”

9. Section 12.1 of the Agreement is hereby amended by deleting the words “March 30, 2011” and replacing such words with the following:

“the date which is ninety (90) days following the Effective Date.”

10. Section 22.3 of the PPA is hereby amended by deleting the address and contact information with respect to the System Owner and replacing such address and contact information with the following:

"If to System Owner:

Solar Star Oceanside, LLC
1414 Harbour Way South,
Richmond, CA 94804

11. Exhibit B to the PPA is hereby amended by deleting such Exhibit B in its entirety and replacing such exhibit with Exhibit B hereto.
12. Exhibit C to the PPA is hereby amended by deleting such Exhibit C in its entirety and replacing such exhibit with Exhibit C hereto.
13. Exhibit D to the PPA is hereby amended by deleting such Exhibit D in its entirety and replacing such exhibit with Exhibit D hereto.
14. Exhibit E to the PPA is hereby amended by deleting such Exhibit E in its entirety and replacing such Exhibit E with Exhibit E hereto.
15. Exhibit F to the PPA is hereby amended by deleting such Exhibit F in its entirety and replacing such exhibit with Exhibit F hereto.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the SYSTEM OWNER and the HOST CUSTOMER.

IN WITNESS WHEREOF, the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of _____, 2012.

SOLAR STAR OCEANSIDE, LLC.

CITY OF OCEANSIDE

By: _____

By: _____

Peter A. Weiss, City Manager

By: _____

APPROVED AS TO FORM:

Employer ID No.

City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

EXHIBIT C TO PPA
QUALIFICATIONS AND ASSUMPTIONS

1. Allowances

The following are allowance relating to certain portions of the installation and construction included in System Owner's pricing under the Agreement. Any variance between the allowance and the actual cost of a given item shall be adjusted by a Change Order pursuant to Section 4.2 of the Agreement.

- 1) Permits-\$6,000

2. Labor

This Project is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at the Host Customer's main office at the address set forth in Section 16.1 or may be obtained online at <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted at the job site. Power Provider and all contractors and subcontractor(s) under it, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of this PPA and the employment of apprentices.

3. Corrosion Category

Site is assumed to have a corrosion category for a 20 year life. More severe conditions would result in added maintenance costs.

4. Utility Requirements

System Owner assumes that all utility-owned electrical equipment serving the facility has adequate capacity to handle the System output. Any costs associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, and system impact studies are not included in this scope of work. Additional Host Customer-side protection required by the utilities above that provided by the certified inverters is not included.

5. Landscaping

No site landscaping, plant restoration, or weed abatement work is included in this proposal, except as stipulated in Stormwater Pollution Prevention Plan.

6. Site Access Roads

System Owner's scope of work includes 6,000 sf of 12' wide access roads. Access roads shall be constructed of 8" gravel over compacted sub grade.

7. Fencing

System Owner's scope of work includes 2,700 lf of 6' Tall galvanized, Chain Link fencing around PV array. No other fencing is included.

8. Site & Construction Conditions

a. Hazardous Materials

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

b. Changes Due to Existing Facilities and Structures

Changes or unforeseen work resulting from existing utilities and structures, right of ways, and/or hazards, underground or above ground, or any undocumented building upgrades are not included.

9. Foundations, Soils & Site Preparation

Based on the Ninyo and Moore Geotechnical Evaluation Report, dated February 16, 1999, System Owner assumes 16' light and 18' heavy pipe driven pile foundations, comprised of a steel pile that's 4.5" OD x 0.188" thick wall, hot-dipped galvanized. The required depth for this embedment is 10' and 12', leaving 6' above grade for the array connection and is ASTM 500 Grade C. The weight per foot is over 65 lb. the entire pipe pile is HDG (not painted) to ASTM 123. This is a 'heavy-duty' galvanization process, meaning the materials are first sandblasted, then dipped.

Existing site soil is assumed to have characteristics that do not differ materially from the Geotechnical Evaluation Report set forth above, which will allow the use of standard foundations. Soil conditions that are less favorable may result in a change to the foundation design; costs associated with sub-grade cobbles, boulders, rock formations, cemented soils, or soils hard enough to impede pier installation are not included.

10. Site Preparation

System Owner will prepare the site and provide design & engineering for Site Preparation work. Site Preparation work shall include:

- Grubbing and scraping
- Grading to specified slope tolerance if needed.
- Storm Water Pollution Prevention Plan requirements

EXHIBIT D TO PPA

SOLAR ELECTRICITY PRICE

Solar Electricity Rate Year	Solar Electricity Price per kWh
1	\$0.09580
2	\$0.09820
3	\$0.10065
4	\$0.10317
5	\$0.10575
6	\$0.10839
7	\$0.11110
8	\$0.11388
9	\$0.11672
10	\$0.11964
11	\$0.12263
12	\$0.12570
13	\$0.12884
14	\$0.13206
15	\$0.13536
16	\$0.13875
17	\$0.14222
18	\$0.14577
19	\$0.14942
20	\$0.15315

Year 1 shall mean the 12-month period immediately following the Commercial Operation Date. Year 2 shall mean the immediately following 12-month period, and so forth.

EXHIBIT E TO PPA

ESTIMATED ANNUAL PRODUCTION

Year of System Term	Estimated Production (kWh)*
1	2,212,288.36
2	2,201,226.92
3	2,190,220.79
4	2,179,269.68
5	2,168,373.33
6	2,157,531.47
7	2,146,743.81
8	2,136,010.09
9	2,125,330.04
10	2,114,703.39
11	2,104,129.87
12	2,093,609.22
13	2,083,141.18
14	2,072,725.47
15	2,062,361.84
16	2,052,050.04
17	2,041,789.78
18	2,031,580.84
19	2,021,422.93
20	2,011,315.82

***The Parties acknowledge and agree that the Estimated Production shall not be deemed a production guaranty (except as may be specifically provided in Section 20.2); nor shall it be deemed a cap on the amount of Electricity that Host Customer shall be required to take delivery of and purchase in accordance with the terms of the Agreement.**

EXHIBIT F TO PPA

EARLY TERMINATION PAYMENT SCHEDULE

Early Termination Occurs in Year:	Early Termination Fee
1	\$4,532,000
2	\$4,117,490
3	\$3,662,520
4	\$3,182,348
5	\$2,677,665
6	\$2,150,483
7	\$2,127,078
8	\$2,097,775
9	\$2,061,333
10	\$2,018,561
11	\$1,968,182
12	\$1,909,534
13	\$1,841,123
14	\$1,763,672
15	\$1,675,627
16	\$1,576,088
17	\$1,463,243
18	\$1,337,661
19	\$1,197,430
20	\$1,041,332

SOLAR ENERGY
POWER PURCHASE AGREEMENT

by and between

SUNEDISON ORIGINATION1, LLC

and

CITY OF OCEANSIDE
WATER UTILITIES DEPARTMENT

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POWER PURCHASE AGREEMENT

This Solar Energy Power Purchase Agreement (this "Agreement") is made and entered into as of this 18th day of August, 2010 (the "Effective Date"), by and between **SUNEDISON ORIGINATIION1, LLC** ("System Owner") and **CITY OF OCEANSIDE** ("Host Customer"). Each of System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

WHEREAS, Government Code section 4217 et seq. authorizes public agencies to develop energy conservation, cogeneration, and alternate energy supply at the facilities of public agencies; and

WHEREAS, on August 18, 2010, the City Council of the Host Customer made those findings required by Section 4217.12 of the Government Code that: (1) The anticipated cost to the Host Customer for electrical energy services provided by the solar panel system under this Agreement will be less than the anticipated marginal cost to the Host Customer of electrical energy that would have been consumed by the Host Customer in the absence of those purchases and (2) The difference, if any, between the fair rental value for the real property (the "Premises") subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under this Agreement; and

WHEREAS, Host Customer desires to reduce its energy costs as well as its dependence on fossil fuel electric generating resources and to promote the generation of electricity from solar photovoltaic facilities; and

WHEREAS, Host Customer desires to enter into a lease of the Premises with System Owner for the purposes of installing, operating, maintaining and repairing a ground mounted photovoltaic system, solar panels, and sell the output from the system to Host Customer at those rates set forth herein; and

WHEREAS, System Owner desires to design, install, own (or lease), operate, and maintain the ground-mounted photovoltaic system, solar panels on the Premises and sell the output from the system to Host Customer at those rates set forth herein; and

WHEREAS, System Owner has developed an ownership and financing structure for solar systems, which facilitates the indirect use of certain tax incentives and accelerated depreciation by a public agency, and which benefits Host Customer by offering a competitive Solar Electricity Rate; and

WHEREAS, Host Customer desires to lease the Premises to System Owner, based on the terms of a separate lease agreement, for the sole purpose of installing, operating, maintaining and repairing a ground-mounted photovoltaic system, solar panels; and

WHEREAS, as part of this agreement and in consideration of the lease of the Premises to System Owner, System Owner and Host Customer intend that Host Customer will obtain and retain all environmental credits (green tags) generated by the solar panel system but that System Owner shall own all other financial incentives and tax benefits associated with the development of solar photovoltaic systems, including the installation, ownership and

operation of the solar panel system and the sale of energy from the system to the Host Customer.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

AGREEMENT

1. DEFINITIONS; RULES OF INTERPRETATION

1.1. Definitions. The following terms shall have the following meanings:

1.1.1. "Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

1.1.2. "Business Day" means any day other than Saturday, Sunday or a legal holiday in the State of California.

1.1.3. "BES" means the Host Customer's existing building electrical systems that are owned, operated, maintained and controlled by the Host Customer, including the interconnection of these systems with the local utility.

1.1.4. "Contract Year" means each consecutive twelve (12) month period commencing on the Service Commencement Date, and each anniversary thereof.

1.1.5. "Default" means any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Section 15 (Default) hereof.

1.1.6. "Dispute" shall have the meaning set forth in Section 22.1 (Disputes).

1.1.7. "Due Date" shall have the meaning set forth in Section 8.4 (Payments).

1.1.8. "Early Termination Payment" shall mean the greater of the (1) fee payable by Host Customer to System Owner set forth on Exhibit F, Column 1 and (2) the Fair Market Value, as defined herein, of the System, payable under the circumstances described in Sections 17.4 and 17.5.

1.1.9. "Electricity" means the electrical capacity and associated electrical energy.

1.1.10. "Emergency" means any event or condition relating to or affecting the System which poses an imminent threat of injury to persons or damage to property, including any person or property at the Premises.

1.1.11. "Energy Audit" shall have the meaning set forth in Section 22.7 (Energy Audit).

1.1.12. "Energy Deficiency Quantity" shall have the meaning set forth in Section 9.4.2.

1.1.13. "Energy Surplus Quantity" shall have the meaning set forth in Section 9.4.2.

1.1.14. "Environmental Financial Attributes" means each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future, excluding, however, any Renewable Energy Credits: (i) performance-based incentives under the California Solar Initiative, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, "allowances"), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such allowances.

1.1.15. "Event of Default" means a Default of this Agreement, as set forth in Section 15 (Default).

1.1.16. "Fair Market Value" shall mean, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 18.1.

1.1.17. "Financing Party" means, as applicable (i) any Person (or its agent) from whom System Owner (or an Affiliate of System Owner) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to System Owner (or an Affiliate of System Owner) with respect to the System, including pursuant to a sale/leaseback transaction.

1.1.18. "Force Majeure Event" shall have the meaning set forth in Section 16.1 (Force Majeure).

1.1.19. "Host Customer" shall have the meaning set forth in the introductory paragraph hereto.

1.1.20. "Initial Term" shall have the meaning set forth in Section 2.1 (Service Term).

1.1.21. "Interim Term" shall have the meaning set forth in Section 2.2 (Interim Term).

1.1.22. "Late Fee" shall have the meaning set forth in Section 8.5 (Late Fees).

1.1.23. "Lease" shall have the meaning set forth in Section 3 (Right to Access and Occupy the Premises).

1.1.24. "Meter" means the standard instrument(s) and equipment used to measure and record the Output and delivered to the Host Customer at the Point of Delivery. The Meter will be considered part of the System.

1.1.25. "Notice Date" shall have the meaning set forth in Section 18.1 (Purchase Option).

1.1.26. "Output" means the Electricity produced by the System delivered by System Owner to the Host Customer at the Point of Delivery.

1.1.27. "Person" shall mean any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or any other individual or entity.

1.1.28. "Point of Delivery" means the physical location, as set forth on Exhibit B (System), attached hereto, where the System connects to the BES, at which point custody and control of Output is transferred from System Owner to Host Customer.

1.1.29. "Premises" means the Host Customer's property, as described in Exhibit A (Premises), upon which System Owner will install the System.

1.1.30. "Prudent Industry Practice" The practices, methods and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

1.1.31. "Renewable Energy Credits" Certificates (including tradable renewable certificates), green-e tags, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

1.1.32. "Renewal Term" Any additional term, which shall extend the Initial Term, to the extent agreed upon by the Parties in writing pursuant to Section 2.1 (Service Term) hereof.

1.1.33. "Service Term" shall have the meaning set forth in Section 2.1 (Service Term).

1.1.34. "Service Commencement Date" shall have the meaning set forth in Section 2.3 (Service Commencement Date).

1.1.35. "Site" Those areas on the Premises where the System is to be located, as more fully described in Exhibit A (Premises).

1.1.36. "Solar Electricity Price" shall have the meaning set forth in Section 8.1 (Purchase Price).

1.1.37. "System" All equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, Meters, mounting systems, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to maintaining the use of the System and providing Output

to Host Customer through and in conjunction with the BES. The System excludes any part of the BES as shown in Exhibit B (System), attached hereto, as such Exhibit B (System) may be modified from time to time during the Service Term.

1.1.38. "System Owner" shall have the meaning set forth in the introductory paragraph hereto.

1.1.39. "System Owner Permitted Transfer" shall have the meaning in Section 21.1.

1.1.40. "Term" shall mean, collectively, the Initial Term and the Service Term.

1.1.41. "Utility Rate" means the applicable all-inclusive electric service rate charged to Host Customer by the electric utility (including municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Host Customer is located and any other energy service System Owner serving Host Customer, as applicable. This all-inclusive rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, transition or competitive service charges, taxes, and other fees and charges in place.

1.2. Interpretation. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender, any reference to a time of day shall mean the local time; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to "writing" include printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; and references to Persons include their respective successors and permitted assigns.

2. TERM

2.1. Service Term. The term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall terminate twenty (20) years following the Service Commencement Date (subject to the additional timeframes in certain Force Majeure Events described in Section 16.2 (Result of Force Majeure), as applicable), unless terminated earlier in accordance with the terms and conditions in this Agreement. Commencing on the date which is six (6) months prior to the end of the Initial Term or any Renewal Term, the Parties may meet and negotiate the terms and conditions on which this Agreement may be extended for one or more succeeding Renewal Terms, upon the written request of the other Party to so meet and negotiate. The Parties shall memorialize any renewals in writing specifying the term of the renewal period and any changes to the underlying Agreement. The Initial Term and any succeeding Renewal Terms combined shall be referred to herein as the "Service Term".

2.2. Interim Term. The period commencing on the Effective Date and continuing through and until the Service Commencement Date shall be referred to herein as the “Interim Term”.

2.3. Service Commencement Date. System Owner shall provide no less than three (3) Business Days written notice prior to the Service Commencement Date to Host Customer that the System is ready for operation in accordance with Prudent Industry Practice and that service under this Agreement will begin on the date certain indicated in the notice (the “Service Commencement Date”). The Parties intend that the Service Commencement Date shall be no later than eighteen (18) months from the date that all applicable environmental approvals have been obtained from the regulatory agencies as specified further in Section 10 herein, but in no event shall the Service Commencement Date occur more than two (2) years from the Effective Date. In the event that the above deadlines for the Service Commencement Date have not been achieved, either Party may terminate the Agreement except to the extent that such failure is caused by Force Majeure events or to the extent the System Owner has commenced and is diligent proceeding with installation of the System at such time. Neither Party shall be liable to the other in connection with any termination pursuant to this Section 2.3.

3. RIGHT TO ACCESS AND OCCUPY THE PREMISES

Concurrently herewith, Host Customer and System owner shall enter into a separate land lease agreement (“Lease”), which is incorporated into this Agreement by this reference, for the sole purpose of granting System Owner the right to use the Premises for the installation, operation, maintenance, repair and removal of the System on the Premises during the term of this Agreement, in consideration of this Agreement and the parties’ respective rights and obligations hereunder.

4. CONSTRUCTION AND INSTALLATION OF SYSTEM

4.1. Construction of System. During the Interim Term, System Owner shall install, construct, service and test the System, pursuant to the terms and conditions set forth in Exhibit B (System), attached hereto. The System Owner must submit design plans and specifications to the City of Oceanside Building Department for plan check and final approval. The Host Customer shall have the right to inspect all construction for the purpose of confirming that the System Owner is adhering to the approved plans and specifications.

4.2. [Reserved.]

4.3. Site Preparation. The System Owner is responsible for any grubbing, clearing and grading of project site; including obtaining the City of Oceanside Grading Permit.

4.4. Aesthetic Considerations. System Owner and Host Customer shall agree on commercially reasonable measures, if any, to ensure that the construction and operation of the System does not negatively impact the aesthetic qualities of the Premises. Any aesthetic concerns of Host Customer shall be provided in writing to System Owner prior to System Owner’s commencement of installation activities. Any reasonably documented incremental costs incurred by System Owner to address aesthetic measures shall be borne by Host Customer.

4.5. Contractors. System Owner may hire independent contractors to design, build, and install the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by System Owner or by competent and financially responsible independent contractors, with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and, to the extent required by applicable law, duly licensed as such under the laws of the State of California, and shall be performed pursuant to written contracts with such contractors. System Owner shall contract with an independent contractor for purposes of meeting its obligations under this Section 4 (Construction and Installation).

4.6. Compliance with Laws. The System shall conform with all applicable governmental rules, regulations and orders, including, without limitation, obtaining all permits including Conditional Use Permit and City Building Permit or approvals required by any governmental entity. Host Customer shall bear no liability for System Owner's failure to obtain any such permit or approval. Prior to commencement of construction, System Owner shall procure at its expense, all necessary building, fire safety, conditional use and other permits. Host Customer will cooperate with System Owner in obtaining such permits; provided, however, that this covenant to cooperate shall not be deemed or construed as a waiver of any right or obligation of the Host Customer acting in its governmental capacity.

4.7. Completion of Work. The System shall be deemed to have been completed upon (i) execution and delivery to the Host Customer of a written notice certifying completion thereof and further certifying that all costs and expenses thereof have been paid and that there are no unpaid costs or expenses of any nature related thereto; and (ii) acceptance by the Host Customer of such notice within seven (7) days of receipt of such notice and copies of such permits from the System Owner; and (iii) the interconnection to the grid and all review and approvals have been provided by the applicable utility and the State of California. If Host Customer fails to issue a specific rejection of a completion notice within seven (7) calendar days, the notice shall be deemed accepted.

4.8. [RESERVED]

4.9. Ownership of System. Ownership of (i) all structures, buildings, fixtures or System constructed by System Owner upon the Premises, (ii) all alterations, additions or betterments thereto shall vest in System Owner or its Financing Parties for all purposes, including, investment tax credits, depreciation for federal and state tax purposes. Host Customer and System Owner agree that the System shall at all times be personal property severable from the Premises and shall not become a fixture.

4.10. Time for Completion of System. System Owner must complete the construction of the System so that the System is permitted and licensed pursuant to applicable laws and regulations and may be utilized for the purpose stated herein.

4.11. Credit Support.

4.11.1. Prior to the commencement of construction of the System, System Owner shall provide, or cause its subcontractor to provide, to Host Customer a construction bond, letter of credit or other form of credit support reasonably acceptable to Host Customer

in an amount to be agreed upon by the Parties, but not to exceed \$270,000, in order to secure System Owner's obligations during construction of the System. Upon completion of the construction and after acceptable start up of the System, Host Customer shall promptly return all credit support provided by System Owner or its subcontractor pursuant to this Section 4.11.1. If the credit support is provided as a letter of credit, such letter of credit shall be substantially similar to the form of letter of credit attached hereto as Exhibit C.

4.11.2. Within seven (7) calendar days of the release of that security provided under Section 4.11.1 above, and prior to the commencement of the Service Term, in order to secure System Owner's obligation to remove the System from the Premises upon the termination of the Service Term, System Owner shall provide to Host Customer a security of the type described in Section 4.11.1, equal to at least \$100,000.00. Such security shall be irrevocable except upon the verification by the Host Customer that System Owner has met its obligations hereunder and draws upon the security shall be limited to the Host Customer until removal of the System. Such credit support shall not be available for any purpose other than the costs of the removal of the System from the Premises upon the termination of the Service Term. To the extent that System Owner does not remove the System pursuant to Section 18.2, Host Customer shall have the right to draw on the security for such removal. To the extent that there are unused funds available under the security after such removal (taking into account any proceeds received for the resale or salvage of the System), such funds shall be promptly returned to System Owner.

4.12. Location of System. Host Customer and System Owner agree that the System shall be situated on Host Customer's Premises at the location specified in Exhibit B (System), attached hereto.

5. INSURANCE

5.1. Minimum Insurance. System Owner shall procure and maintain insurance as specified herein and as may otherwise be required under the California Solar Initiative Program Contract ("CSI Contract") with the California Center for Sustainable Energy, which insurance terms and conditions are hereby incorporated by reference. If the insurance standards of the CSI Contract and this Agreement conflict, System Owner shall comply with the more expansive, higher standards.

5.2. General Liability Coverage. From the Effective Date until termination or expiration of the Service Term, System Owner agrees to maintain or cause to be maintained General Liability insurance against claims for bodily injury, loss of life or property damage occurring on the Premises (including within the buildings thereon); and on the portion of the street and the sidewalks adjacent thereto with bodily injury, loss of life and property damage coverage in a combined single limit of not less than One Million Dollar's (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance may be in the form of blanket liability coverage applicable to the Premises and to other property owned or occupied by System Owner, as applicable. The System Owner shall name Host Customer under the applicable policy as Additional Insured.

5.3. Automobile Coverage. System Owner or its contractors, as applicable, shall carry a business automobile policy with a combined single limit of not less than One Million Dollars (\$1,000,000). Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability,

Code 1 (any auto). The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Host Customer.

5.4. Workers Compensation Coverage. System Owner or its contractors, as applicable, shall carry Workers' Compensation insurance during the full term or duration of the Agreement, to insure statutory liability for injury to his/her employees in the State of California. The policy should have limits as follows: Bodily injury by accident, \$1,000,000 each accident and each employee a \$1,000,000 policy limit.

5.5. Property Insurance. System Owner shall maintain property insurance in an amount not less than the replacement value of the System, including labor costs.

5.6. All Policies. Such insurance, excluding Worker's Compensation coverage, shall include an insurer's Waiver of Subrogation in favor of the Host Customer (excluding, however, the other Party's gross negligence or intentional misconduct) and will be in a form and with insurance companies acceptable to the Host Customer. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the other Party. Before beginning any improvements under this Agreement, System Owner shall furnish to Host Customer proof that System Owner has, or, as applicable, its Subcontractors have, taken out for the period covered by the work under this Agreement, full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Contract, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.

5.7. Evidence Required. Insurance certificates for all coverage required by the Agreement shall be provided by System Owner to Host Customer within twenty (20) Business Days after the Effective Date and from time to time during the term hereof as may be reasonably requested in writing by the other Party. All of said insurance policies provided by System Owner shall be issued by companies licensed to do business in California and having not less than a general policyholder's rating of "A-; VII" as set forth in the most recent issue of A.M. Best's Key Rating Guide except for the State Fund Workers' Compensation Insurance. All insurance policies shall contain a provision that such policies shall not be canceled or terminated without thirty (30) days prior notice from the insurance company to the other Party.

6. CONNECTION AND POINT OF DELIVERY

6.1. Point of Delivery. The Point of Delivery is the point identified in Exhibit B (System), attached hereto, which is the point of connection of the System to the BES. Title to the Output shall pass from System Owner to Host Customer at the Point of Delivery.

6.2. Connection. System Owner shall provide all necessary wiring requirements from the System to the Point of Delivery. System Owner is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement.

7. SALE OF OUTPUT

7.1. Sale and Delivery of Output. System Owner shall deliver the Output to the Point of Delivery, and Host Customer shall accept delivery of the Output at the Point of Delivery, beginning on the Service Commencement Date until the end of the Service Term.

7.2. System to Reduce Other Electric Purchases. The Parties intend that the Output will reduce Host Customer's purchase of Electricity from other sources, including the Host Customer's local utility. Host Customer agrees to meet its Electricity needs first, by the Output from the System, and second, by purchasing Electricity and other electric products from other sources. The System is not intended to eliminate entirely Host Customer's Electricity needs from other sources, and therefore, Host Customer shall have a contractual arrangement in place at all times during the Service Term with its local electric utility or with another System Owner of retail electricity which is responsible for meeting all of Host Customer's electric requirements needs, regardless of the Output from the System.

7.3. Sale Only to Host Customer. In no event shall System Owner sell directly, or be deemed to have sold directly, Output to any Person other than Host Customer. In the event that Host Customer's load is less than the total Output being delivered by System Owner to the Point of Delivery at any given time, the Parties acknowledge and agree that such Output shall have been delivered to Host Customer at the Point of Delivery in accordance with Sections 6.1 and 7.1 and shall flow through the BES to the interconnection point between the BES and the local utility. The Parties further acknowledge and agree that in such instance, the treatment of such Output shall be determined by arrangements between Host Customer and its local utility (which arrangements are typically referred to as "Net Metering"), which shall have no impact whatsoever upon the terms and conditions of this Agreement. Regardless of Host Customer's load, it shall pay for all Output made available by System Owner at the Point of Delivery.

7.4. Interim Term Energy. Host Customer shall accept delivery of Output, including in form of test energy, during the Interim Term. There shall be no charge imposed upon Host Customer for System Owner's provision of this Output during the Interim Term.

7.5. Taxes. System Owner is responsible for local, state and federal income taxes attributable to System Owner for income received under this Agreement. Host Customer agrees to bear and pay when due any sales, gross receipts or similar tax, to the extent applicable, imposed upon a seller of Electricity, to the extent that the Utility Rate also includes a similar sales, gross receipts or similar tax that is at least as high, on a kWh basis, as the sales or gross receipts tax attributable to System Owner. If such a sales or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Utility Rate, then System Owner agrees to bear the costs of such sales or gross receipts taxes.

7.6. Revenue and Tax Code Notice. This Agreement may result in the creation of a possessory interest. (Rev. & Tax. Code § 107.6) If such a possessory interest is vested in System Owner, System Owner may be subjected to the payment of personal property taxes levied on such interest. System Owner shall be responsible for the payment of, and shall pay before becoming delinquent, all taxes, assessments, fees, or other charges assessed or levied upon System Owner. System Owner further agrees to prevent such taxes, assessments, fees, or other charges from giving rise to any lien against the Premises or any improvement located on

or within the Premises. Nothing herein contained shall be deemed to prevent or prohibit System Owner from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law. System Owner shall be responsible for payment of any real or personal property taxes, possessory interest taxes, permit fees, business license fees and any and all fees and charges of any nature levied against the Premises and operation of System Owner and the operations of System Owner at any time. If bills for taxes on the Premises, and the System thereon are received by the Host Customer, Host Customer shall immediately remit such bills to System Owner. Any fee or charge resulting from any possessory interest created hereby and/or the use and operation of the System on the Premises shall be the responsibility of the System Owner. In the event of any sale of the Premises, System Owner shall not be responsible for any taxes levied as a result of such sale.

8. PURCHASE PRICE, PAYMENT AND BILLING

8.1. Purchase Price. System Owner will charge Host Customer the “Solar Electricity Price” for each kilowatt hour (kWh) delivered to Host Customer at the Point of Delivery during the Service Term in accordance with the pricing provisions set forth in Exhibit D (Solar Electricity Price), attached hereto.

8.2. Monthly Payment. Host Customer shall pay System Owner a monthly payment as set forth in the monthly invoice by System Owner, based on the Solar Electricity Price provided in Exhibit D (Solar Electricity Price).

8.3. Invoices. Each month, System Owner shall prepare and provide Host Customer an invoice. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer’s obligation to pay, or System Owner’s right to collect, any payment by System Owner under any such invoice. Each invoice shall set forth in reasonable detail the calculation of all amounts owed as part of the Solar Electricity Price.

8.4. Payments. Subject to its contest rights set forth in Section 8.6 (Contest Rights), Host Customer shall pay the full amount of each invoice on or before the thirtieth (30th) calendar day following receipt thereof (“Due Date”). In response to a properly submitted invoice, the Host Customer shall, at Host Customer’s option, (a) cause a check to be drawn in the undisputed amount due made payable to the System Owner, or (b) pay such amount via wire transfer to System Owner’s bank account. Unless otherwise directed in the monthly invoice, all payments must be made payable to:

c/o Sun Edison LLC
12500 Baltimore Avenue
Beltsville, MD 20705
Attn: VP of Project Finance
Copy to: General Counsel

8.5. Late Fees. If any part of a Monthly Payment is not made by Host Customer within thirty (30) calendar days following the Due Date, Host Customer agrees to pay System Owner a late fee of twelve (12) percent per annum of each such late payment (“Late Fee”), to the extent such Late Fee is permitted by law. Host Customer agrees to pay System Owner any Late Fees not later than one (1) month following the original Due Date. The calculation of Late Fees that remain unpaid as set forth in this Section 8.5 (Late Fees) shall not constitute any waiver of Host Customer’s obligation to pay such amounts when due, or System Owner’s

right to collect, any payment by Host Customer under any such invoice, as well as System Owner's right to exercise its rights with respect to Host Customer's Default.

8.6. Contest Rights. Host Customer shall notify System Owner in writing within ten (10) calendar days of receipt of the monthly invoice of any portion of the invoiced amount which it has a reasonable basis to dispute in accordance with Section 22.1 (Disputes). The contested portion of any invoiced amount shall not relieve Host Customer of its obligation to pay the uncontested portion of such invoice as set forth in Section 8.4 (Payments).

9. METERING

9.1. Metering Equipment. The Parties acknowledge and agree that System Owner shall, or shall cause the Third Party Monitor to, provide, install, own, operate and maintain the Meter, and System Owner shall, or shall cause the Third Party Monitor to, exercise reasonable care in the installation, operation, and maintenance of the Meter so as to assure to the maximum extent reasonably practical an accurate determination of such quantities.

9.2. Measurements. Readings of the Meter shall be conclusive as to the amount of Output; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 9.3, or registers inaccurately, measurement of Output shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Meter were registering accurately; or (b) if no reliable information exists as to the period of time during which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 9.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Meter through the date of the adjustments, provided, however, that, in the case of clause (ii), the period covered by the correction under Section 9.3 shall not exceed six months.

9.3. Meter Reading. System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Host Customer. The Meter shall be used as the basis for calculating the Solar Electricity Price under this Agreement. The records from each Meter shall be made available to Host Customer upon a monthly basis by the fifteenth (15th) calendar day of the next month so that Host Customer may reconcile its monthly invoice with the meter read.

9.4. Testing and Correction.

9.4.1. System Owner shall provide calibration testing of the Meter prior to its installation and at least annually thereafter to ensure the accuracy of such Meter. Host Customer may request that System Owner perform more frequent testing at Host Customer's expense. Each Party and its consultants and representatives shall have the right to witness each test conducted to verify the accuracy of the measurements and recordings of the Meter. System Owner shall provide at least ten (10) Business Days' prior written notice to Host Customer of the date upon which any such test is to occur. System Owner shall prepare a written report setting forth the results of each such test, and shall provide Host Customer with copies of such written report not later than twenty (20) Business Days after completion of

such test. System Owner shall bear the cost of the annual testing of the Meter and the preparation of the Meter test reports.

9.4.2. The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(a) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(b) System Owner shall, within fifteen (15) Business Days after receiving such notice from Host Customer or issuing such notice to Host Customer, advise Host Customer in writing as to System Owner's position concerning the accuracy of such Meter and System Owner's reasons for taking such position.

(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the Third Party Monitor to test the Meter.

(i) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter under Section 9.4.2 shall bear the cost of inspection and testing of the Meter.

(ii) If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (a) System Owner shall promptly cause any Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 9.2. If as a result of such adjustment the quantity of Output for any period is decreased (such quantity, the "Energy Deficiency Quantity"), System Owner shall reimburse Host Customer for the amount paid by Host Customer in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of the Meter. If as a result of such adjustment the quantity of Output for any period is increased (such quantity, the "Energy Surplus Quantity"), Host Customer shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of the Meter.

10. ENVIRONMENTAL COMPLIANCE

Host Customer shall comply with any and all applicable environmental laws, including but not limited to, the California Environmental Quality Act ("CEQA"), and shall retain the services of qualified consultants to provide all required research and documentation required for such compliance, including but not limited to, the preparation of a mitigated negative declaration. System Owner shall cooperate with the Host Customer in preparing the CEQA documentation, including, but not limited to, that CEQA documentation required for a conditional use permit and/or other applicable permits. Host Customer shall be responsible for the costs of the initial study required for environmental compliance. The initial study will be performed under the direction and control of System Owner, subject to the requirements of this Section. Either Party, following the completion of such initial study, may terminate this Agreement by written notice to other Party should environmental compliance measures or unforeseen site conditions render the Project economically disadvantageous for the

terminating Party or the time required to implement any environmental compliance measures or remediation exceed the terminating Party's reasonable expectations. If Host Customer does not obtain all required environmental approvals by March 30, 2011, Host Customer may terminate this Agreement by written notice to System Owner. Nothing set forth herein shall be interpreted to require either Party to undertake environmental remediation at the Premises if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the System. The City Council of the Host Customer shall be the lead agency for the purposes of filing any and all required documents and obtaining the relevant approvals. Host Customer shall bear its own costs incurred as the lead agency and for review of environmental compliance.

11. ENVIRONMENTAL FINANCIAL ATTRIBUTES AND RENEWABLE ENERGY CREDITS

11.1. Title to Environmental Financial Attributes. All Environmental Financial Attributes relating to the System or the Output will be and remain property of System Owner. System Owner shall have all right, title, and interest in and to any and all Environmental Financial Attributes that relate to the Output or the System during the Term, and Host Customer shall have no right, title or interest in or to any such Environmental Financial Attributes.

11.2. Title to Renewable Energy Credits. All Renewable Energy Credits relating to the System or the Output will be and remain property of Host Customer. System Owner shall, from time to time, take all actions, prepare all documents, and make all filings as may be necessary to have certified and to transfer to Host Customer all Renewable Energy Credits relating to the System or the Output, and System Owner shall have no right, title or interest in or to any such Renewable Energy Credits.

11.3. Reporting of Ownership. Host Customer shall not report to any Person that any Environmental Financial Attributes relating to the Output belong to any Person other than System Owner. System Owner shall not report to any Person that any Renewable Energy Credits relating to the Output belong to any Person other than Host Customer.

11.4. Further Assurances. At each respective Party's request and expense, the other Party shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence such Party's right, title and interest in and to the Environmental Financial Attributes or Renewable Energy Credits, as the case may be, relating to the System or the Output. If the standards used to qualify the Environmental Financial Attributes or Renewable Energy Credits to which such Party is entitled under this Agreement are changed or modified, the other Party shall at the first Party's request and expense use all reasonable efforts to cause the Environmental Financial Attributes or Renewable Energy Credits to comply with new standards as changed or modified.

12. CONDITIONS PRECEDENT TO SYSTEM OWNER'S OBLIGATIONS

12.1. Conditions to System Owner's Obligations. Subject to the terms and conditions of this Agreement, each of the conditions precedent set forth in Sections 12.1.1 through 12.1.4 is required prior to System Owner's obligations to: (a) commence construction and installation of the System; and (b) commence the delivery of Output to Host Customer. Without limiting the subsequent provisions of this Section 12.1, if any of the conditions

precedent is not satisfied (or waived by System Owner) by March 30, 2011, System Owner or Host Customer shall have the option to terminate the Agreement, and upon such termination neither Party shall have any further liability under this Agreement.

12.1.1. Financing. System Owner shall have closed all financing for the acquisition and installation of the System and, to the extent required pursuant to the applicable financing documentation, System Owner shall have reached written agreement with third party financing sources pursuant to which System Owner may collaterally assign some or all of its rights and obligations hereunder to such parties including, as need be, under an amended and restated version of this Agreement to be negotiated prior to consummation of the financing for the System.

12.1.2. Necessary Governmental Approvals. System Owner shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the system; and (b) for the generation and sale of Output to the Host Customer under this Agreement, prior to the commencement of delivery of Output to Host Customer.

12.1.3. Additional Consents and Approvals. System Owner shall have obtained from all parties any necessary easements, leases/leasebacks, licenses, consents and approvals and other rights System Owner deems necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

12.1.4. Diligence. System Owner shall have had the opportunity to complete proper due diligence relating to Host Customer, including but not limited to legal, accounting, environmental and technical reviews. Such diligence shall also include visits by System Owner to Host Customer's Premises, meetings between System Owner's management and Host Customer's management, and other measures deemed necessary by System Owner.

12.1.5. No Material Changes. System Owner determines that Host Customer's electricity requirements have remained consistent since the Effective Date of this Agreement, and Host Customer shall not have experienced any other material changes, including changes in its load profile.

12.1.6. Host Customer's Credit. As a public agency, Host Customer's audited financial statements are public documents available for inspection and shall be made available to System Owner upon request, if available. Prior to commencement of construction of the System, System Owner shall provide notice to Host Customer that each of the conditions precedent in this Section 12.1 has been satisfied or waived.

13. REPRESENTATIONS

13.1. Host Customer Representations. Host Customer hereby represents to System Owner that:

13.1.1. Due Authorization. Host Customer is duly authorized and empowered to enter into this Agreement and Host Customer shall deliver to System Owner certified

copies of all ordinances, resolutions and other documents evidencing such authorization and empowerment to enter into this Agreement.;

13.1.2. No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer licenses with respect to the Premises;

13.1.3. Host Customer Data. Host Customer has furnished, or caused others to furnish, to System Owner accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

- (a) Utility and any other energy service System Owner records for the 12month period preceding the Effective Date;
- (b) Any energy or environmental audits relating to all or any part of
- (c) the Premises;
- (d) Any service or maintenance agreement(s) regarding the BES, or
- (e) any part thereof; and
- (f) Construction drawings (“as-builts”) in existence as of the effective Date;

13.1.4. Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects;

13.1.5. Ability to Perform. Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either Party’s ability to perform its respective obligations hereunder and, if Host Customer is a Governmental Authority or instrumentality thereof, as set forth in the Recitals to this Agreement, the Host Customer has complied with all laws and regulations relative to procurement of the Output; and

13.1.6. Ownership and Control over Premises. Host Customer owns title to and controls the Premises and the real estate upon which the Premises are located, and no other parties hold a security interest in or lien or mortgage on said Premises or real estate.

13.1.7. Hazardous Materials or Contamination. Host Customer, after due diligence, has no knowledge of any hazardous materials or environmental contamination on the Site or the designated construction lay down areas.

13.2. System Owner Representations. System Owner hereby represents to Host Customer that:

13.2.1. Due Authorization. System Owner is duly authorized and empowered to enter into this Agreement;

13.2.2. No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party;

13.2.3. Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects; and

13.2.4. Ability to Perform. System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party's ability to perform its respective obligations hereunder.

14. OBLIGATIONS OF THE PARTIES

14.1. Maintenance of System. System Owner shall maintain the System in good working order, ordinary wear and ensure that the System is capable of producing Electricity at a commercially reasonable rate. . System Owner may contract with an independent contractor to operate and maintain the System. Prior to entering into a maintenance contract with an unaffiliated third-party contractor, System Owner shall inform Host Customer, and Host Customer shall have the right to disapprove of such contractor within ten (10) business days after having received notification from System Owner, if Host Customer provides information to System Owner that such contractor is not reputable or unfit to maintain the System in accordance with industry standards.

14.2. Ownership and Quiet Enjoyment of System. Host Customer acknowledges and agrees that it is not the owner of the System and does not have title to the System. Host Customer agrees that it will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person.

14.3. Host Customer Responsibilities. Host Customer shall be responsible for maintaining and fulfilling all contractual obligations with respect to its interconnected utility service System Owner, including with respect to such interconnection service, power supply service, net metering arrangements and delivery service, and, where applicable, meet all requirements imposed by the local utility and the California Public Utilities Commission with respect to such service. Host Customer shall also be responsible for all ongoing maintenance and upgrades to the BES, required by the local utility or mandated by Prudent Industry Practice and applicable laws and regulations.

14.4. Host Customer Data. Host Customer will furnish, or cause others to furnish, for the Service Term hereof, to the System Owner, promptly as information becomes available, accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

14.4.1. Utility records throughout the Service Term;

14.4.2. Any energy or environmental audits performed during the Service Term relating to all or any part of the Premises;

14.4.3. Any service or maintenance agreement(s) entered into during the Service Term regarding the BES, or any part thereof;

14.4.4. Construction drawings (“as-builts”) developed during the Service Term; and

14.4.5. On request, annual audited financial statements of Host Customer, including a balance sheet and income statement, by the later of: (i) six (6) months of the end of each fiscal year of Host Customer during the Interim Term and the Service Term; or (ii) in accordance with Host Customer’s usual reporting schedule.

14.5. Notice of Malfunction. Host Customer shall utilize its best efforts to notify System Owner within twenty-four (24) hours of Host Customer’s actual notice of (a) any material malfunction in the operation of the equipment installed on the Premises in connection with this Agreement or equipment affected by the Output provided pursuant to this Agreement (including the BES) and/or (b) any interruption or alteration of the energy supply to the Premises.

14.6. Cooperation Regarding Approvals. The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents described in this Agreement or otherwise required to effect the purposes of this Agreement.

14.7. Alteration of System Owner Equipment. Host Customer shall not cause or voluntarily permit any modification or alteration to any part of System Owner’s equipment located on the Premises, including without limitation the System, valves, conduits, piping or other materials or tools, except in the event of an Emergency. Host Customer shall (a) take all actions reasonably necessary to respond to the Emergency and to prevent or overcome the threat of injury to persons or damage to property or to minimize the adverse consequences thereof and (b) inform System Owner as soon as practicable (orally or in writing) as to the occurrence of the Emergency and the corrective actions taken by Host Customer in light of the Emergency.

14.8. Host Customer Maintenance of BES. Host Customer shall use care to ensure that the BES does not disrupt or interfere with the operation of the System. Host Customer shall maintain, repair and replace such parts of the BES as necessary in accordance with Prudent Industry Practice so that its equipment within the Premises complies with all applicable building codes and industry standards.

14.9. No Authorization. Host Customer, under the operation and maintenance provisions of this Agreement, agrees that it is not authorized to adjust, maintain, alter, service, repair or in any way interfere with operation of the System, except as authorized in writing by System Owner or in the event of an emergency where life or property is threatened.

15. DEFAULT

15.1. Events of Defaults. Any one or more of the following events shall constitute an event of default (“Event of Default”):

15.1.1. Host Customer fails to pay an undisputed Invoice (or undisputed portion thereof) within fifteen (15) days following the applicable Due Date;

15.1.2. Host Customer materially interferes with or damages the System;

15.1.3. Either Party fails to observe or perform any other material term or condition in this Agreement or the Lease;

15.1.4. Either Party (i) voluntary or involuntarily files or has filed a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provisions of the bankruptcy laws that is not dismissed within sixty (60) days of the initial filing, (ii) makes an assignment for the benefit of creditors, (iii) has a receiver appointed with respect to the business property or assets of such Party on the Premises, or (iv) otherwise is unable to pay its debts as they become due;

15.1.5. Either Party misrepresents a material fact as of the Effective Date or any representation and warranty made by a Party pursuant to Section 13 is not true and accurate at the time such representation and warranty is made; and

15.1.6. Either Party violates or fails to enforce any applicable law, regulation or ordinance related to the use or occupancy of the Premises.

15.2. Right to Cure. Either Party shall, after notice, promptly and diligently commence curing a Default and shall have thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of the defaulting Party's failure is such that more than thirty (30) days are reasonably required for its cure, then such Party shall not be in Default if the defaulting Party begins such cure within the thirty (30) day period described in the preceding sentence, provides notice to the non-defaulting Party of the extended time required for performance, within such thirty (30) day period, and, thereafter, diligently prosecutes such cure to completion.

15.3. Notice of Default. A Party shall not be considered to be in Default under this Agreement unless (i) the non-defaulting Party has given written notice specifying the Default; and (ii) the defaulting Party has failed to cure the Default in accordance with provisions of Section 15.2 (Right to Cure).

15.4. Remedies. If an Event of Default occurs and the defaulting Party has failed to cure as set forth herein, the non-defaulting Party shall have right to terminate this Agreement by giving written notice to the defaulting Party on a date specified in such notice. Upon the giving of such notice, the terms of this Agreement shall expire and terminate on such date of termination as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Agreement, and all rights of the defaulting Party hereunder shall expire and terminate, but the defaulting Party shall remain liable as provided herein. No expiration or termination of this Agreement, by operation of law or otherwise, and no re-entry or repossession of the Premises shall relieve System Owner or Host Customer, as the case may be, of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, re-entry or repossession

15.5. Remedies Cumulative. The exercise by either Party of any right or remedy in connection with this Agreement shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

15.6. No Waiver. The non-defaulting Party's failure to enforce any provision of this Agreement with respect to an Event of Default hereunder shall not constitute a waiver of the non-defaulting Party's right to enforce such provision or any other provision with respect to any future Event of Default. The waiver of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition or of any subsequent failure to meet such term or condition.

16. FORCE MAJEURE

16.1. Force Majeure. Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement (excluding Host Customer's obligations to make payment, which obligations shall not be excused except to the extent that System Owner fails to deliver Electricity to the Point of Delivery), to the extent that performance of any such obligation, including the Service Commencement Date, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party or its affiliates (a "Force Majeure Event"), including, but not limited to by way of example, strikes or other labor disputes (other than strikes or labor disputes solely by employees of the Parties to this Agreement as a result of such Party's failure to comply with a collective bargaining agreement), supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest. If Host Customer is the Party claiming a Force Majeure Event, a Force Majeure Event shall not include any action taken or not taken by Host Customer in its governmental capacity. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

16.2. Result of Force Majeure. If System Owner is unable to deliver Output due to a Force Majeure Event, Host Customer shall not be obligated to make payment for such period with respect to Output that was not delivered to the Point of Delivery. The Service Term of this Agreement will be extended for an equal number of days in which Host Customer payment was not required due to a Force Majeure Event affecting System Owner as described in this Section 16 (Force Majeure) but in no event to exceed ninety (90) days. Either Party shall be entitled to terminate this Agreement, without any liability to the other Party, upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting the other Party has been in existence for a period of ninety (90) days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day notice period.

17. TERMINATION AND PARTIES' RIGHTS

17.1. Termination for Environmental Approvals. The Parties understand and agree that as a material condition of this Agreement, the Environmental Compliance set forth in Section 10 herein must be completed prior to the commencement of any work under this Agreement by System Owner. If environmental laws or regulations prohibit the construction of the System as set forth in Exhibit B (System), either Party may, in its sole discretion, terminate this Agreement without further obligation on its part and each Party shall bear its own costs. In addition, System Owner may terminate this Agreement in accordance with the

provisions set forth in Section 10. Should a Party terminate the Agreement pursuant to this provision, such Party shall not be liable for any amounts expended by the other Party to secure environmental credits or rebates from the government or other entities.

17.2. Termination for Failure to Meet Condition Precedent. As set forth in Section 12, under the circumstances and subject to the conditions described therein, System Owner or Host Customer may terminate this Agreement if the conditions precedent described in Section 12.1 are not met or waived. Such termination for failure to meet condition precedent shall not obligate the Host Customer to pay the Early Termination Payment.

17.3. [RESERVED.]

17.4. Termination for Event of Default. Upon the occurrence and during the continuation of any Event of Default hereunder, the nondefaulting Party shall have the right to terminate this Agreement as set forth herein. If such termination occurs as a result of Host Customer's default, as specified below, then Host Customer shall pay System Owner an amount equal to the Early Termination Payment as set forth in Section 17.5 (Early Termination Payment). Any termination pursuant to this Section 17.4 (Termination for Default) shall not eliminate Host Customer's right to pursue any other remedy given under this Agreement now or hereafter existing at law or in equity or otherwise.

17.5. Early Termination Payment.

17.5.1. In the event that:

- (a) Host Customer is in Default under this Agreement; and
- (b) System Owner elects to terminate this Agreement, System Owner shall be entitled to remove the System and require that Host Customer pay the Early Termination Payment to System Owner. In the event that System Owner elects to exercise its remedy under this Section 17.5.1, such remedy and any associated measure of damages shall be the sole and exclusive remedy available to System Owner as a result of termination of this Agreement and all other remedies or damages at law or in equity in connection with Host Customer's Default shall be waived by System Owner (other than any rights System Owner may have to indemnification from Host Customer).

17.5.2. In the event that System Owner elects to require payment of the Early Termination Payment by Host Customer as provided in Section 17.5.1, then, as soon as practicable after calculation of the Early Termination Payment by System Owner, System Owner will notify Host Customer of the amount of the Early Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Host Customer shall be required to pay the Early Termination Payment, if undisputed, and any amount otherwise due and outstanding under this Agreement to System Owner within thirty (30) Business Days after the effectiveness of such notice.

18. OPTIONS UPON EXPIRATION OR TERMINATION

18.1. Purchase Option. Host Customer, in its sole discretion, shall have the option to purchase the System (directly from System Owner or its Financing Party, if such Financing Party holds the title to the System) upon the expiration of the Agreement by notifying System

Owner in writing, at least one hundred and eighty (180) days prior to the end of the Service Term, that Host Customer intends to exercise its option under this Section 18.1 (Purchase Option). If Host Customer exercises its option under this Section 18.1 (Purchase Option), Host Customer shall pay System Owner (or its Financing Party, as the case may be) an amount equal to Fair Market Value of the System as agreed upon by the Parties. For thirty (30) days following the date of the written notice in which the Host Customer provides the System Owner notice that Host Customer shall not agree to extend the Term ("Notice Date"), the Parties shall meet and utilize their best efforts to agree upon a Fair Market Value of the System. If the Parties are unable to agree upon Fair Market Value during this thirty (30) day period, the Parties shall each retain the services of a professional appraiser to value the System. Each Party shall bear its own costs for the appraiser. The two appraisers selected by the Parties shall mutually select a third appraiser, whose services shall be equally paid for by the Parties. The three appraisers shall evaluate and determine Fair Market Value within sixty (60) days of the Notice Date, submitting their reports to both Parties. The Fair Market Value shall be derived by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraiser's valuations, and the arithmetic means of the remaining two appraisers' valuations shall be the Fair Market Value of the System. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof, in good repair, condition and working order, normal wear and tear excepted. All applicable warranty documents and warranties shall be transferred to the Host Customer within thirty (30) days of the Host Customer's payment to the System Owner. System Owner shall complete all documentation required to transfer any warranties to Host Customer.

18.2. Non-Election/Removal. If, at the end of the Service Term, Host Customer does not exercise its option to purchase the System pursuant to Section 18.1 (Purchase Option) or the Parties cannot agree, via negotiations or the use of an appraiser, on the Fair Market Value of the System, System Owner shall remove all of the System from Host Customer's Premises at System Owner's sole expense. To the extent that System Owner removes the System, System Owner agrees to make or have made any repairs to the Premises to the extent necessary to repair any adverse impact such removal directly causes to Host Customer's Premises so as to render the Premises to the condition immediately prior to the Agreement, normal wear and tear excepted.

19. LIABILITY; INDEMNIFICATION

19.1. Limitation of Liability. Unless explicitly provided in this Agreement, neither Party hereto nor any of their respective partners, officers, directors, agents, subcontractors, vendors or employees shall be liable to the other Party hereunder for any consequential or indirect loss or damage arising out of this Agreement, whether such loss or damage arise in contract, tort (including negligence), strict liability, warranty, statute or otherwise, including loss of revenues, loss of profit, cost of capital, loss of goodwill, increased operating costs or any other special or incidental damages.

19.2. Indemnification. To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, Affiliates and representatives ("Indemnitees") from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages, fines, penalties, court costs and reasonable attorneys' fees (collectively, "Claims") arising out of personal injury or third party property damage and any and all fines or penalties imposed by any governmental authority, in each case to the extent they are caused by an

action or inaction of the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, or arise or result from, or are occasioned by or in connection with: (a) the Indemnifying Party's breach of this Agreement; (b) any negligent, reckless or intentionally wrongful act or omission to act by the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; and (c) violations of laws by the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; provided, however, that if an Indemnitee has contributed to such injury, damage, fines or penalties, the indemnification shall be reduced based upon the relative degree of fault of the Indemnifying Party and such Indemnitee. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence. This indemnification, defense and hold harmless obligation shall not be limited by insurance coverages and shall survive the termination or expiration of this Agreement.

20. SYSTEM PERFORMANCE; INTERRUPTION OF SERVICE

20.1. System Performance. System Owner shall take all actions reasonably necessary to ensure that the System is capable of providing Electricity at a commercially reasonable rate. Such obligation includes all components and labor costs associated with keeping the System in proper working order. System Owner shall retain any and all rights to manufacturer's warranties and any warranties with respect to the work of contractors or subcontractors during the Service Term in order to meet its obligations to maintain the proper performance of the System.

20.2. Estimated Energy Production. The Parties agree that the System is estimated to produce Electricity in those amounts set forth in Exhibit E. The annual estimate of Electricity produced by the System for any given Contract Year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each Contract Year of the Initial Term is set as forth in Exhibit E. The System shall produce no less than 80% of the Estimated Annual Production on an annual basis for each Contract Year, except to the extent due to Force Majeure or non-performance by Host Customer of its obligations hereunder. The 80% production goal shall be decreased annually by half of one percent (0.5%) to account for solar panel degradation over time. For example, during the second year following the Commercial Operation Date, the System would be required to produce no less than 79.5% of the Estimated Annual Production. In the event that the System does not produce at least 80% (as such amount is adjusted annually for degradation) of the Estimated Annual Production amount, System Owner shall install additional equipment as feasible and authorized by the Host Customer to bring the System's performance to within 80% of the Estimated Annual Production amount (and any adjustment for degradation). If the installation of additional panels is not feasible due to Site constraints or constraints imposed by its Financing Party, System Owner shall pay to Host Customer an amount equal to the product of (i) the positive difference, if any, of the price per kWh for then commercially available, utility-provided energy in the applicable market minus the kWh Rate hereunder, multiplied by (ii) the difference between actual Energy production for that year of the Term and 80% of the applicable Estimated Annual Production set forth in Exhibit E. Such payment shall be made by System Owner to Host Customer within fifteen (15) calendar days of the end of each year of the Term during which the System has underperformed. The System's

production shall be determined utilizing the invoices paid by Host Customer, as such invoices may be adjusted for meter inaccuracies as set forth herein.

20.3. Transfer to Host Customer. Upon any transfer of ownership of the System to Host Customer under this Agreement, System Owner agrees to caused to be passed-through and transferred to Host Customer any applicable manufacturers' warranties provided on the System, as provided in Exhibit B (System), attached hereto. Such warranties include any guarantee, reflective of the passage of time, of the System nameplate rating in standard test conditions and any other express or implied warranty that may be transferable to Host Customer from the manufacturer, designer or installer of the System. Following any such transfer of ownership to Host Customer, the Service Term shall end, and System Owner shall have no further obligation with respect to the performance of any part of the System.

20.4. Interruptions Are Expected.

20.4.1. System Owner shall use reasonable care to ensure the operation of the System and supply of Output. However, the Parties explicitly acknowledge and understand that the System is comprised of intermittent generation facilities, and will not provide Host Customer with an uninterrupted supply of Electricity. System Owner shall not be liable for any special, direct, indirect, consequential or incidental damages caused by or resulting from any interruption in Output during the Service Term, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any interruption except as may be provided for in Section 20.1.1 hereunder. If Output is interrupted, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

20.4.2. Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by Host Customer) any physical obstruction to the operation of the System that reduces Output.

20.5. Reasons for System Owner's Interruption of Output. Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output. System Owner shall use reasonable efforts to give written notice to Host Customer of any expected interruption of delivery of Output at least five (5) Business Days prior to the date of any interruption and shall use its reasonable efforts to inform Host Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Host Customer and the use of its Premises. Notwithstanding the foregoing, System Owner shall not be required to supply Output to Host Customer at any time System Owner reasonably believes BES to be unsafe. System Owner reserves the right to curtail Output if so directed by authorized governmental authorities or electric utilities. To the extent feasible and not otherwise necessitated by an emergency or immediate risk to the health and safety of persons or destruction of property, System Owner shall perform maintenance during non-peak demand time.

20.6. Cost to Restore Service Following Interruption. System Owner shall bear any costs associated with restoring service following any interruption of Output as part of System Owner's operation of the System; provided, however, that, if interruptions of Output are caused directly by the actions or inactions of Host Customer, then Host Customer agrees to bear the incremental costs associated with the restoration of the delivery of Output.

21. ASSIGNMENT; RIGHT OF FIRST REFUSAL

21.1. Consent. The Parties may not assign this Agreement without the consent of the other Party, such consent not to be unreasonably withheld or delayed; provided, however, that each Party may, without the consent of the other Party, collaterally assign its rights and obligations under this Agreement in connection with any financing; and, provided further that System Owner may assign its rights and obligations under this Agreement without the prior written consent of Host Customer to (a) its managing entity, (b) any entity in which its managing entity is manager or general partner, or (c) if the System is sold by System Owner as part of a portfolio of solar systems to a financial investor or a utility (subsections (a) through (c), collectively, a "System Owner Permitted Transfer"). In addition, System Owner may assign this Agreement, without the prior written consent of Host Customer to any Affiliate of System Owner, provided that such assignment occurs no later than 90 days following the commencement of commercial operations of the System. Any assignment or transfer not permitted by this Section shall be null and void. Any assignment or transfer made pursuant to this Section shall provide that all sureties and insurance, required under any provision of this Agreement, run to the benefit of the Host Customer, regardless of the status of the assignment and whether Host Customer seeks recourse from the assignor or assignee. Each Party agrees to execute such reasonable consents to assignment and other documents, and to provide such information, as is requested by the other Party and reasonably required in connection with any permitted assignment pursuant to this Section 21.1.

21.2. Transfer and Assignment Notice.

21.2.1. In the event System Owner desires to assign or transfer all or any portion of the Agreement, System Owner shall deliver to the Host Customer written notice of its intention ("Transfer Notice"), which written notice shall set forth: System Owner's bona fide intention to transfer the Agreement, or portion thereof; and

21.2.2. The name and address of the proposed purchaser or transferee ("Proposed Transferee").

21.2.3. The Proposed Transferee shall be bound by the same terms and conditions as set forth in this Agreement. System Owner agrees to provide the Host Customer with such information, including financial statements and tax returns, as the Host Customer may require in order to evaluate the financial net worth and liquidity and the staff, relevant business acumen and experience of any proposed transferee. Notwithstanding anything to the contrary herein, any approved transfer shall not relieve System Owner of its liability and obligations hereunder which are accrued and unpaid as of the date of the transfer and System Owner shall remain liable and obligated as to the Host Customer unless the Host Customer in writing releases System Owner there from.

21.3. Right of First Refusal. In the event that System Owner proposes to sell the System (other than pursuant to a sale/leaseback transaction) and assign this Agreement and the Lease to a third party, excluding, however, a System Owner Permitted Transfer, System Owner hereby grants to the Host Customer a right of first refusal ("Right of First Refusal"), to purchase the System upon the terms and conditions set forth in the subsections below and in Section 18.1 (Purchase Provision) herein. Upon receipt of the Transfer Notice and the accompanying documentation, in the event the Host Customer desires to exercise its right of First Refusal and purchase and acquire the System upon the terms and conditions and the

purchase price set forth in the Transfer Notice (including the purchase price set forth therein), the Host Customer shall deliver to System Owner written notice of the Host Customer's election to exercise its Right of First Refusal, which written notice shall be delivered to System Owner on or before the expiration of thirty (30) calendar days after the receipt of the Host Customer of the Transfer Notice. The Host Customer's failure to deliver such written notice to System Owner of its election to exercise its Right of First Refusal within such thirty (30) calendar day period shall be deemed to constitute Host Customer's waiver of its right to exercise its Right of First Refusal. If Host Customer timely exercises the Right of First Refusal pursuant to the terms and conditions of this Section, the amount for the purchase of the System, shall be as stated in the Transfer Notice. If the Transfer Notice expressly states that no purchase price has been agreed upon between System Owner and the proposed System purchaser, the purchase price for the System shall be calculated as set forth in Section 18.1 (Purchase Provision) herein. In the event the Host Customer timely exercises the Right of First Refusal pursuant to the terms and conditions of this Section, the closing for the purchase of the Agreement, or portion thereof, shall take place at the location and at the date and times set forth in the Transfer Notice. In the event such closing does not take place for any reason, System Owner shall not transfer the Agreement to any other party without first complying with the provisions of this Section.

21.4. Subsequent Obligations. In the event Host Customer does not timely exercise its Right of First Refusal as described herein, if the System Owner and the Proposed Transferee modify or amend the terms and conditions of the proposed transfer, System Owner shall be required to deliver a subsequent Transfer Notice to Host Customer setting forth the revised modifications and conditions in accordance with the provisions of this Section. In the event Host Customer does not timely exercise its Right of First Refusal as described herein, if System Owner and the Proposed Transferee do not consummate the transaction contemplated in the Transfer Notice, System Owner shall be required to comply with the provisions of this Section with respect to any subsequent transfers. This Right of First Refusal shall survive and apply to any subsequent transfers, excluding, however, any System Owner Permitted Transfer.

21.5. Cooperation with Financing. Host Customer acknowledges that System Owner will be financing the acquisition of the System and Host Customer agrees that it shall, at System Owner's sole cost and expense, reasonably cooperate with System Owner and its financing parties in connection with such financing for the System, including but not limited to, (a) the furnishing of non-confidential information reasonably required by System Owner's financing parties, and (b) the giving of such estoppel certificates; provided that the foregoing undertaking shall not obligate Host Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Host Customer, under this Agreement. In the event that System Owner identifies a secured Financing Party in a subsequent notice to Host Customer, then Host Customer hereby:

21.5.1. acknowledges the collateral assignment by System Owner to the Financing Party, of System Owner's right, title and interest in, to and under the Agreement, as consented to under Section 21.1 of the Agreement.

21.5.2. acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the System Owner's interests in this Agreement.

21.5.3. acknowledges that it has been advised that System Owner has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

21.5.4. acknowledges and agrees that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to System Owner, and in the event System Owner shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default for an additional period of five (5) days.

21.5.5. Any Financing Party shall be an intended third- party beneficiary of this Section 21.5.

22. MISCELLANEOUS

22.1. Disputes. Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the agreement of the Parties, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation or, in the event the Parties do not agree upon submission of the Dispute to mediation, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, however, in no event shall System Owner be obligated to deliver Output in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

22.2. Confidentiality.

22.2.1. Host Customer agrees that this Agreement and its performance by both Parties, particularly the costs of operations and services incurred in that performance, are proprietary and confidential to System Owner, and that disclosure of the terms of this Agreement or of the costs incurred under this Agreement to third parties would injure System Owner's ability to compete or place it in a position of disadvantage. To the extent allowed by law, Host Customer agrees not to disclose to any third parties the terms of this Agreement or costs incurred by either Party under this Agreement, without System Owner's prior written consent, such consent not to be unreasonably withheld.

22.2.2. System Owner agrees to keep confidential all documents, utility bills, architectural and mechanical plans, and any other information provided by Host Customer during the Service Term of this Agreement and thereafter.

(a) Notwithstanding anything to the contrary herein, Host Customer acknowledges that System Owner is or may become a publicly-held company, and in

conjunction with its duties as a publicly-held company, System Owner may from time to time be required to report to the public through press releases the signing of contracts and agreements or other such activities, and, to the extent consistent with applicable law, System Owner shall have given Host Customer advance notice and an opportunity to review and provide comment on such releases. On System Owner's request, Host Customer shall (a) provide a written description of information about Host Customer as it should appear in such press releases, or (b) provide written notice that Host Customer does not want its name to appear in all or certain press releases.

(b) Notwithstanding anything to the contrary herein, System Owner understands that as a public agency, the Host Customer is subject to the California Public Records Act, and, as such, may be required to provide discloseable documents in response to a California Public Records Act request. If the records are created or maintained by the System Owner pursuant to this Agreement, System Owner shall provide timely access to such documents to the Host Customer for reproduction, upon request. Should System Owner refuse to provide access to any documents requested by the Host Customer pursuant to a Public Records Act request, notwithstanding the indemnification provision of this Agreement, System Owner shall bear all legal costs in responding to the Public Records Act request and shall indemnify the Host Customer, its Board, every member of the Board, employees, volunteers and assigns against any and all claims related to such Public Records Act request.

(c) Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction

22.3. Notices and Changes of Address. All notices to be given by either Party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, or expresses overnight delivery service addressed as follows:

If to System Owner:

SunEdison
12500 Baltimore Ave.
Beltsville, MD 20705
Attention: VP of Project Finance

If to Host Customer:

City of Oceanside, Water Utilities Department
300 North Coast Highway

Oceanside, CA 92054
Attention: Water Utilities Director

or such other addresses as either Party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

22.4. Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of California. Host Customer hereby consents and submits to the personal jurisdiction of the courts of the State of California.

22.5. Marketing. Each Party shall have the right to promote the installation and usage of the installed System through any means, including through press releases, case studies, published material, Internet websites and sales literature, so long as the other Party is provided with the opportunity to review and approve the proposed promotion, which approval may not unreasonable be withheld.

22.6. No Amendment. This Agreement may not be amended, modified or terminated except by a writing signed by the Parties hereto.

22.7. [Reserved.]

22.8. Further Documents. The Parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

22.9. Severability. If any part of this Agreement is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced only to the extent required to remove the invalidity or unenforceability.

22.10. Counterparts. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

22.11. Neutral Interpretation. The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

22.12. No Waiver. The failure of a Party to enforce any term of this Agreement or a Party's waiver of the nonperformance of a term by the other Party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can be amended only by written agreement of the Parties.

22.13. Survival. Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including without limitation Section 22.1 (Disputes).

22.14. Complete Agreement. This Agreement, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, whether oral or written. There are no agreements, understandings, or covenants between the Parties of any kind, expressed or implied, oral or otherwise pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Agreement, effective as of the date first above written.

CITY OF OCEANSIDE

SUNEDISON ORIGINATION1, LLC

By: *Pat Weins*

By: *James Sparrow*

Its: *CITY MANAGER*

Its: *Vice President*

Date: *8-19-10*

Date: *7/30/10*

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
BARBARA L. HAMILTON
Assistant City Attorney



Shannon W. Foster
Notary Public

**EXHIBIT A
DESCRIPTION OF PREMISES**

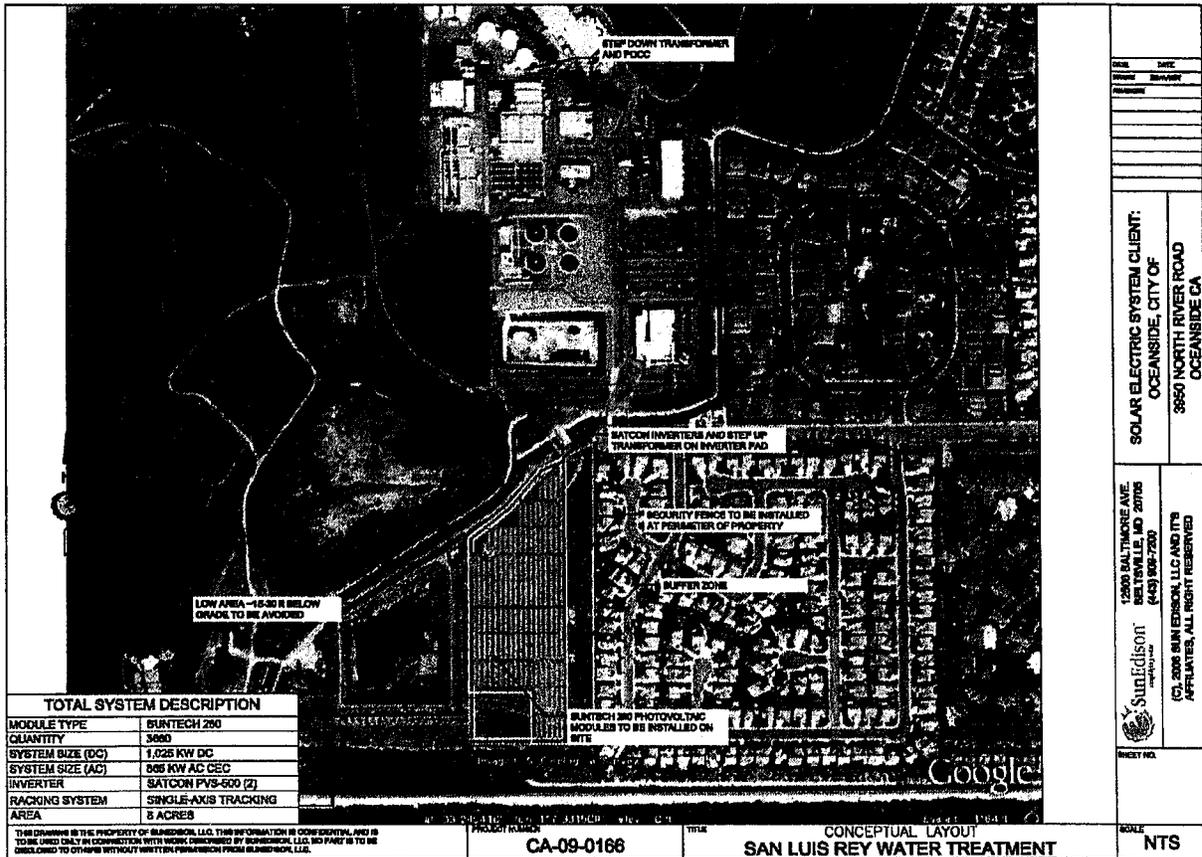
(Site Map Attached)

SITE

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING THE EASTERLY 475 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF WHALEN LAKE ROAD

EXHIBIT B SYSTEM

[System/BES Interconnection Diagram, including Point of Delivery and provisions applicable to construction, installation, service and testing of System]



**EXHIBIT C
IRREVOCABLE LETTER OF CREDIT**

Expiration Date _____
or any automatically extended date as herein
below set forth

TO: CITY OF OCEANSIDE, WATER UTILITIES DEPARTMENT
OCEANSIDE, CA 92054

We, [INSERT NAME OF BANK/FINANCIAL INSTITUTION], do hereby establish our Irrevocable Letter of Credit in favor of you, City of Oceanside Water Utilities Department (the "City"), up to the aggregate amount of _____ Dollars (\$ _____) available by your draft(s) at sight drawn on ourselves and accompanied by the documents specified below:

1. The signed certification of the Director of the Water Utilities Department that _____ (the "System Owner") has not complied with the terms and conditions of that certain Agreement for the Solar Energy Agreement and Power Purchase Agreement to be dedicated to the Water Utilities Department, dated on or about _____, 20____, pursuant to which System Owner has agreed to install and complete improvements including upon certain real property, commonly described as Tax Assessor Parcel No(s). _____, or Parcel or Tract Map No. _____, (the "Agreement"); OR
2. The signed certification of the Director of the Water Utilities Department that claims of liens or suits to enforce claims of liens have been filed to enforce payments to contractors, subcontractors, laborers and materialmen who have furnished labor or materials to System Owner for those facilities that are the subject of the Agreement.

It is a condition of this Letter of Credit that it shall be automatically extended without amendment for one (1) year renewal term(s) from the present or any future expiration date of this Letter of Credit, unless fifteen (15) calendar days prior to any such expiration date we notify you in writing that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may withdraw hereunder by means of your drafts drawn at sight on us accompanied by the signed statement of the Director of the Water Utilities Department that the Agreement is still outstanding and in full force and effect.

If the City draws upon this Irrevocable Letter of Credit, then we shall cause System Owner to restore the Irrevocable Letter of Credit, within five (5) business days of the draw, to either the original amount of this Irrevocable Letter of Credit or a reduced amount agreed upon by the City and System Owner in writing following the date that the City certifies that the improvements required by the Agreement.

In the event of a drawing, all documents must be dispatched in one lot by registered mail or courier services directly to: [INSERT ADDRESS OF BANK/FINANCIAL

INSTITUTION PROVIDING LETTER OR CREDIT].

All demands for payment shall specifically state that they are drawn under this Irrevocable Letter of Credit.

This Irrevocable Letter of Credit may not be assigned, conveyed, or otherwise transferred by either party without the express written consent of the City. If there is an approved assignment or transfer, we shall ensure that the Irrevocable Letter of Credit is included in such transfer and is legally binding on our successor in interest.

No right of action shall accrue under this Irrevocable Letter of Credit to or for the use of any person or corporation other than the City as named herein.

This Irrevocable Letter of Credit shall be governed and construed in accordance with the internal laws of the State of California without giving effect to principles of conflicts of law.

This Letter of Credit is our individual obligation and is in no way contingent upon our reimbursement with respect thereto or upon our ability to perfect any lien, security interest, or any other reimbursement.

Any amendments to this Irrevocable Letter of Credit must be in writing. The signatory of this Irrevocable Letter of Credit hereby warrants that he/she is a duly authorized representative of [INSERT NAME OF BANK/FINANCIAL INSTITUTION], and has the authority to bind [INSERT NAME OF BANK/FINANCIAL INSTITUTION], to this Irrevocable Letter of Credit.

We hereby agree with the District that all draft(s) drawn under and in compliance with the terms of this letter of credit will be honored upon presentation to us as specified herein. Except as expressly stated otherwise herein, this undertaking is not subject to any condition or qualification.

Date: _____

[INSERT NAME OF BANK/FINANCIAL INSTITUTION]

By: _____

Its: _____

Mailing Address:

ACCEPTED:

CITY OF OCEANSIDE WATER UTILITIES DEPARTMENT

By: _____

Name: _____

Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State (SEAL)

My Commission expires _____.

EXHIBIT D
SOLAR ELECTRICITY PRICE

<u>San Luis Rey Water Reclamation Facility Solar Photovoltaic System</u>		<u>Solar Electricity Price</u>
<u>Description</u>	<u>Unit</u>	
Solar Photovoltaic (PV) System Capacity	Kilowatts DC	1,025
Power Rate Year <u>1*</u>	\$/kwhr	\$ 0.1250
Power Rate Year <u>2</u>	\$/kwhr	\$ 0.1288
Power Rate Year <u>3</u>	\$/kwhr	\$ 0.1326
Power Rate Year <u>4</u>	\$/kwhr	\$ 0.1366
Power Rate Year <u>5</u>	\$/kwhr	\$ 0.1407
Power Rate Year <u>6</u>	\$/kwhr	\$ 0.1449
Power Rate Year <u>7</u>	\$/kwhr	\$ 0.1493
Power Rate Year <u>8</u>	\$/kwhr	\$ 0.1537
Power Rate Year <u>9</u>	\$/kwhr	\$ 0.1583
Power Rate Year <u>10</u>	\$/kwhr	\$ 0.1631
Power Rate Year <u>11</u>	\$/kwhr	\$ 0.1680
Power Rate Year <u>12</u>	\$/kwhr	\$ 0.1730
Power Rate Year <u>13</u>	\$/kwhr	\$ 0.1782
Power Rate Year <u>14</u>	\$/kwhr	\$ 0.1836
Power Rate Year <u>15</u>	\$/kwhr	\$ 0.1891
Power Rate Year <u>16</u>	\$/kwhr	\$ 0.1947
Power Rate Year <u>17</u>	\$/kwhr	\$ 0.2006
Power Rate Year <u>18</u>	\$/kwhr	\$ 0.2066
Power Rate Year <u>19</u>	\$/kwhr	\$ 0.2128
Power Rate Year <u>20</u>	\$/kwhr	\$ 0.2192

Year 1 shall mean the 12-month period immediately following the Commercial Operation Date. Year 2 shall mean the immediately following 12-month period, and so forth.

EXHIBIT E
ESTIMATED ANNUAL PRODUCTION

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production* (kWh)
1	1,864,005	11	1,720,140
2	1,849,093	12	1,706,379
3	1,834,300	13	1,692,728
4	1,819,626	14	1,679,186
5	1,805,069	15	1,665,753
6	1,790,628	16	1,652,427
7	1,776,303	17	1,639,207
8	1,762,093	18	1,626,093
9	1,747,996	19	1,613,085
10	1,734,012	20	1,600,180

* The Parties acknowledge and agree that the Estimated Production shall not be deemed a production guaranty (except as may be specifically provided in Section 20.2); nor shall it be deemed a cap on the amount of Electricity that Host Customer shall be required to take delivery of and purchase in accordance with the terms of the Agreement.

**EXHIBIT F
EARLY TERMINATION PAYMENT SCHEDULE**

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Host does not take Title (\$/Wdc including costs of removal)	Purchase Date Occurs on: (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date, as such definition is modified in the Agreement)	Column 2 Early Termination Fee where Host takes Title (\$/Wdc, does not include costs of removal)
1	\$7.43		
2	\$6.56		
3	\$5.70		
4	\$4.83		
5	\$3.96		
6	\$3.78		
7	\$3.59		
8	\$3.41		
9	\$3.22		
10	\$3.04		
11	\$2.85		
12	\$2.67		
13	\$2.48		
14	\$2.30		
15	\$2.11		
16	\$1.93		
17	\$1.74		
18	\$1.55		
19	\$1.37		
20	\$1.18		
		91st day following 5th Anniversary	\$3.28
		91st day following 6th Anniversary	\$3.09
		91st day following 7th Anniversary	\$2.91
		91st day following 8th Anniversary	\$2.72
		91st day following 9th Anniversary	\$2.54
		91st day following 10th Anniversary	\$2.35
		91st day following 11th Anniversary	\$2.17
		91st day following 12th Anniversary	\$1.98
		91st day following 13th Anniversary	\$1.80
		91st day following 14th Anniversary	\$1.61
		91st day following 15th Anniversary	\$1.43
		91st day following 16th Anniversary	\$1.24
		91st day following 17th Anniversary	\$1.05
		91st day following 18th Anniversary	\$0.87
		91st day following 19th Anniversary	\$0.68

FIRST AMENDMENT

This First Amendment ("Amendment") is entered into as of ~~November~~ ^{December} 2nd, 2010 ("Effective Date") by and between, SunEdison Origination1, LLC, Delaware limited liability company ("Power Provider") and the City of Oceanside ("Host Customer").

RECITALS:

WHEREAS, Host and Provider entered into that certain Solar Energy Power Purchase Agreement, dated August 18, 2010 ("Agreement"); and

WHEREAS, certain typos were discovered in the body of the Agreement and Host and Provider desire to amend the Agreement as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Amendments. The Agreement is amended as set forth below:

1.1 The Table of Contents, pages i-v of the Agreement is deleted and replaced with Exhibit "A" to this First Amendment

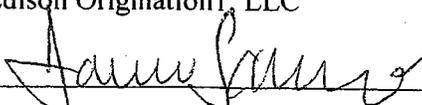
2. Miscellaneous.

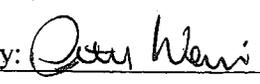
2.1 This Amendment shall be governed and construed in accordance with the domestic laws of the State of California without reference to any choice of law principles.

2.2 This Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

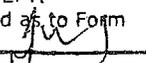
2.3 Except as expressly set forth in this Amendment, the Agreement shall continue to be in full force and effect and is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first written above.

POWER PROVIDER
SunEdison Origination1, LLC
By: 
Name: James Scarrow
Title: Authorized Representative
Date: 11/10/2010

HOST CUSTOMER
City of Oceanside
By: 
Name: PETER WEISS
Title: CITY MANAGER
Date: 12-2-10

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

LEGAL DEPT.
Approved as to Form
Initials: 
Date: _____

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

BARBARA L. HAMILTON
Assistant City Attorney

Exhibit "A"

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ACKNOWLEDGEMENT BY PRINCIPAL

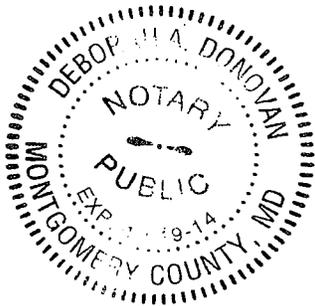
STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 10th day of November, 2010 before me, Deborah A. Donovan, a Notary Public, within and for said County and State, personally appeared James Scarrow to me personally known to be the Authorized Representative Sun Edison Origination 1 LLC and acknowledged that he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Maryland
County of Montgomery



**WRITTEN CONSENT OF SOLE MEMBER AND MANAGER
OF SUNE ORIGINATION1, LLC AUTHORIZING APPOINTMENT OF
AUTHORIZED OFFICERS**

November 5, 2008

The undersigned being the sole member and sole manager (the "Sole Member") of SunE Origination1, LLC, a Delaware limited liability company (the "Company"), for the purpose of taking action without a meeting pursuant to Section 18-404 of the Delaware Limited Liability Act, as amended, and in accordance with the Company's Operating Agreement, as amended, hereby consents to the adoption of the following resolutions:

WHEREAS, it is proposed that it is in the best interest of the Company to appoint officers; and

WHEREAS, it is proposed that it is in the best interest of the Company to authorize such officers to execute and deliver on behalf of the Company any and all binding documents related to the Company's participation in any kind of incentive program associated with solar energy; and

WHEREAS, the Sole Member of the Company deems it to be in the best interest of the Company to designate such officers and to grant them such authority as described above.

NOW, THEREFORE, BE IT RESOLVED, the following people are hereby appointed to serve in the capacities set forth opposite such person's name, to hold office until such time as he is removed or replaced (the "Authorized Officers"):

<u>Name</u>	<u>Office(s)</u>
Kevin Lapidus	Vice President
James Scarrow	Vice President

RESOLVED FURTHER, that the Company authorizes the Authorized Officers to execute and deliver for and on behalf of the Company any and all binding documents related to the Company's participation in any kind of incentive program associated with solar energy; and

RESOLVED FURTHER, that consistent with the foregoing resolutions, any of the Authorized Officers are hereby authorized and directed, in the name and on behalf of the Company, to do all things, to take all such actions, and to execute, deliver and file all such other agreements, instruments, reports, documents and regulatory and other notices and to obtain any and all such waivers, consents and approvals necessary or reasonably required in connection with the foregoing resolutions (such determination to be conclusively, but not exclusively, evidenced by the taking of such actions or the

execution, delivery and filing of such agreements, instruments, reports, documents or regulatory or other notices); and

RESOLVED FURTHER, that all things done, all actions taken and all agreements, instruments, reports, documents and regulatory and other notices executed, delivered or filed through the date hereof, and all things to be done, all actions to be taken and all agreements, instruments, reports, documents and regulatory and other notices to be executed, delivered or filed after the date hereof, by any of the Authorized Officers, or any agents, attorneys, accountants, employees, designees or outside consultants thereof, in the name and on behalf of the Company, in connection with the foregoing resolutions and the transactions contemplated thereunder, hereby are authorized, approved, ratified and confirmed in all respects; and

RESOLVED FURTHER, that this Written Consent of Sole Member and Manager may be executed in two or more counterparts, with facsimile signatures binding as originals, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and shall be filed in the minute book of the Company.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Written Consent of Sole Member and Manager to be duly executed and delivered as of the date first set forth above.

SUNEDISON HOLDINGS II, LLC,

By: Sun Edison LLC, its sole member and manager

By:



Name: James Scarrow

Title: Director of Energy, Asst. General Counsel

SunE Origination1, LLC

OPERATING AGREEMENT

This Operating Agreement (“Agreement”) of SunE Origination1, LLC, a Delaware limited liability company (“**Company**”), is made and entered into as of November 5, 2008 by and between Company and SunEdison Holdings II, LLC, a Delaware limited liability company, as the sole member of the Company (“**Member**”) for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, Title 6, Ch. 18, §§ 18-101 et seq. (“**Act**”). For and in consideration of the mutual covenants contained in this Agreement, Company and Member hereby agree as follows:

1. The address of Company’s registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

2. The name and business address of the agent for service of process in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

3. The purpose of Company is to engage in any lawful act or activity for which limited liability companies may be organized under the Act.

4. Company shall be managed by Member (“**Manager**”).

5. Manager shall promptly make, or arrange to make, such filings as he or she believes necessary or as are required by applicable law to give effect to the provisions of this Agreement and to cause Company to be treated as a limited liability company under the laws of the State of Delaware.

6. Member has assumed the capital account as set forth in the books and records of Company. Member holds a 100% ownership interest in the Company.

7. Ownership Interest Certificate

- a. The ownership interest in Company shall be a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of Delaware (the “**DE UCC**”), and shall be evidenced by a certificate in the form attached hereto as Exhibit A, which certificate shall be signed by Manager or other authorized officer of Company. The certificated ownership interest shall be in registered form within the meaning of Article 8 of the UCC and shall bear a legend in substantially the following form: “This certifies that _____ is the owner of a fully paid and non-assessable ownership interest in the Company consisting of a _____% ownership interest, all as set forth in the Operating Agreement. This certificate, including the rights attendant thereto, shall be a security governed by Article 8 of the Delaware Uniform Commercial Code.”

b . Company shall issue a new certificate to replace a certificate theretofore issued and alleged to have been lost, destroyed or wrongfully taken, if the owner or the owner's legal representative: (i) requests replacement thereof in writing; (ii) files with Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of the certificate; and (iii) satisfies such other terms and conditions as Company may from time to time prescribe.

8. Company's existence as a limited liability company is perpetual.

9. Company shall indemnify and hold harmless Manager from and against any and all claims and demands whatsoever.

10. In all other respects, the business and affairs of Company shall be governed by the provisions of the Act.

11. This is the entire Agreement of Company by the undersigned and may be amended only in writing.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and date first set forth above.

SUNEDISON HOLDINGS II, LLC

By: Sun Edison LLC, its sole member and manager

By: James Scarrow

Name: James Scarrow

Title: Director of Energy, Asst. General Counsel

SunE Origination1, LLC

By: SunEdison Holdings II, LLC, its sole member and manager

By: Sun Edison LLC, its sole member and manager

By: James Scarrow

Name: James Scarrow

Title: Director of Energy, Asst. General Counsel

EXHIBIT A

Ownership Interest Certificate

SunE Origination1, LLC

A Delaware Limited Liability Company

No. 1

100% Ownership Interest

THIS CERTIFIES THAT SunEdison Holdings II, LLC holds a one-hundred percent (100%) ownership interest in SunE Origination1, LLC, a Delaware limited liability company ("Company"), transferable only on the books of the Company by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed.

The ownership interest represented by this Certificate has not been registered and may not be offered for sale, sold or otherwise transferred except pursuant to an effective registration statement under the Securities Act of 1933, as amended ("Act"), or pursuant to an exemption from registration under the Act, the availability of which is to be established to the satisfaction of the Company.

Transfer of this ownership interest is subject to restrictions set forth in the Operating Agreement of the Limited Liability Company, dated as of November 5, 2008 by and between Company and SunEdison Holdings II, LLC, a Delaware limited liability company, as the sole member of Company ("Operating Agreement")

THIS CERTIFIES THAT SUNEDISON HOLDINGS II, LLC IS THE OWNER OF A FULLY PAID AND NON-ASSESSABLE OWNERSHIP INTEREST IN COMPANY CONSISTING OF A 100% OWNERSHIP INTEREST, ALL AS SET FORTH IN THE OPERATING AGREEMENT. THIS CERTIFICATE, INCLUDING THE RIGHTS ATTENDANT THERETO, SHALL BE A SECURITY GOVERNED BY ARTICLE 8 OF THE DELAWARE UNIFORM COMMERCIAL CODE.

The Company will furnish without charge to each ownership interest holder, upon request, a copy of the Operating Agreement which sets forth the powers, designations, preferences and relative participation rights of ownership interest holders and the qualifications, limitations or restrictions of such rights except as otherwise provided by Delaware law.

IN WITNESS WHEREOF, the said Company has caused this Certificate to be signed by its duly authorized representative(s).

Dated: November 5, 2008

SunE Origination1, LLC

By: SunEdison Holdings II, LLC, its sole member and manager

By: Sun Edison LLC, its sole member and manager



Name: James Scarrow

Title: Director of Energy, Asst. General Counsel

CITY OF OCEANSIDE
AMENDMENT 2 TO
PROPERTY LEASE AGREEMENT

**PROJECT: SAN LUIS REY WATER RECLAMATION FACILITY
SOLAR PHOTOVOLTAIC SYSTEM**

THIS AMENDMENT TO PROPERTY LEASE AGREEMENT (hereinafter "Amendment") is made and entered this ____ day of _____ 2012, by and between the City of Oceanside, a municipal corporation, hereinafter designated as "CITY", and SOLAR STAR OCEANSIDE, LLC, hereinafter designated as "LESSEE".

RECITALS

WHEREAS, CITY and LESSEE are the parties to that certain Property Lease Agreement dated August 18, 2010, including assignment dated June 6, 2012 hereinafter referred to as the "Lease", wherein LESSEE agreed to utilize certain property owned by the CITY set forth therein;

WHEREAS, the parties desire to amend the Lease to provide for changes and/or modifications to the following sections:

AMENDMENT

The Property Lease Agreement is hereby amended as follows:

1. The preamble of the Property Lease Agreement is hereby amended by deleting such preamble in its entirety and replacing it with the following:

"THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated as of June 6, 2012, (the "Effective Date"), is executed between the City of Oceanside, a municipal corporation, hereinafter called "City", and SOLAR STAR OCEANSIDE, LLC, hereinafter called "Lessee."

2. Any and all references to "SunEdison Origination1, LLC" in the Property Lease Agreement are hereby deleted and replaced with "SOLAR STAR OCEANSIDE, LLC"
3. Section 2.02(a) of the Property Lease Agreement is hereby amended by deleting the words "March 30, 2011" and replacing such words with the words "ninety (90) days from the Effective Date".
4. Section 3.04 of the Property Lease Agreement is hereby amended by deleting such section in its entirety and replacing it with the following:

“3.04 [Reserved.]”

5. Section 4.02(d) of the Property Lease Agreement is hereby amended by deleting such section in its entirety and replacing it with the following:

“d. [Reserved.]”

6. Section 6.01 of the Property Lease Agreement is hereby amended by deleting the address and contact information with respect to the Lessee and replacing such address and contact information with the following:

“To Lessee:

Solar Star Oceanside, LLC
1414 Harbour Way South,
Richmond, CA 94804

7. Exhibit “B” to the Property Lease Agreement is hereby deleted in its entirety and replace with Exhibit B to Property Lease Agreement hereto.
8. Exhibit C to the Property Lease Agreement is hereby amended by deleting all references therein to “SunEdison Origination1” and replacing such reference with references to “SOLAR STAR OCEANSIDE, LLC”.
9. Exhibit C to the Property Lease Agreement is hereby further amended by deleting the words “August 18, 2010” from the first recital thereof, and replacing such words with “June 6, 2012”.
10. Exhibit C to the Property Lease Agreement is hereby further amended by deleting the words “August 18, 2010” from the first and second paragraphs thereof, and replacing such words with “June 6, 2012”.
11. Exhibit C to the Property Lease Agreement is hereby further amended by deleting the words “August 18, 2030” from the first and second paragraphs thereof, and replacing such words with “June 6, 2032”.
12. Exhibit D to the Property Lease Agreement is hereby amended by deleting all references therein to “SunEdison Origination1” and replacing such reference with references to “SOLAR STAR OCEANSIDE, LLC”.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CITY and the LESSEE.

IN WITNESS WHEREOF, the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of _____, 2012.

SOLAR STAR OCEANSIDE, LLC.

CITY OF OCEANSIDE

By: _____

By: _____

Peter A. Weiss, City Manager

By: _____

APPROVED AS TO FORM:

Employer ID No.

City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

EXHIBIT B TO PROPERTY LEASE AGREEMENT

DESCRIPTION OF SOLAR FIELD

Premises	San Luis Rey Water Treatment Facility 3940 North River Road Oceanside, CA 92058
Mounting System	SunPower T0 Tracker
PV Module	SPR – SER 228
System Size DC Rating kWdc	1,168.27
Number of modules	5,124
Annual Degradation Rate	0.5%
1st Year Expected Output (kWh)	2,212,288
20-Year Expected Output (kWh)	42,205,825

PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

SUNEDISON ORIGINATION1, LLC

FOR THE LEASE OF REAL PROPERTY

LOCATED AT

3950 North River Road, Oceanside, CA 92058

DATED

August 18th, 2010

PROPERTY LEASE AGREEMENT

OCEANSIDE, CA

THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated as of August 18th, 2010 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **SUNEDISON ORIGINATIONS, LLC**, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the date the Oceanside City Council approves the Lease ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as San Luis Rey Water Treatment Plant located in the City of Oceanside, County of San Diego, State of California, as more particularly described on Exhibit "A" attached hereto (the "**Property**").

WHEREAS, Concurrently herewith City and Lessee have entered into a certain Solar Energy Power Purchase Agreement (the "**PPA**") wherein Lessee has agreed to develop, finance, install, own (or lease), operate, maintain and repair a solar energy facility, as more particularly described in Exhibit B to the PPA (the "**Solar Facility**"), on the "**Premises**" (as defined in Section 1 below).

WHEREAS, in order to carry out the terms of the PPA, and to enable City to enjoy its rights and perform its obligations under the PPA, City agrees to lease the Premises (as defined below) to Lessee on the terms and conditions set forth below.

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein do mutually agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the San Luis Water Treatment Plant and more particularly described and depicted in Exhibit "A" attached hereto and by this reference made a part of this Lease. Said real property is hereinafter called the "Premises." City hereby also grants to Lessee a non-exclusive

easement and right of way across or through the Property and any surrounding or nearby lands or buildings owned or leased by City as may be reasonably required for (i) the delivery, installation, operation, maintenance and repair of the Solar Facility; (ii) utility lines, pipes and conduit for the transmission of electricity or otherwise serving the Solar Facility; and (iii) as may be otherwise reasonably required by Lessee in connection with this Agreement and the Solar Facility.

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of installing, operating, and (as applicable) removing, the Solar Facility.

Lessee covenants and agrees to use the Premises for the above specified, limited and particular exclusive use. In the event that Lessee fails to uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Except as set forth above, Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment of surrounding property owners' use of their property.

1.03 Agreement Use. It is expressly agreed that the Premises is leased to Lessee in conjunction with the fulfillment of the PPA between City and Lessee so that Lessee can construct, own (or lease), operate, maintain and repair a Solar Facility to sell energy generated by the Solar Facility to the City. As additional consideration for the lease of the Premises, Lessee agrees to timely satisfy the terms and conditions of the PPA. Failure by Lessee to perform pursuant to the terms and conditions of the PPA shall be deemed a default under this Lease.

1.04 Premises and Lessee Improvements.

a. City Improvement Obligations. City shall deliver the Premises to Lessee in an "as is, where is" condition without any representation or warranties as to the suitability of the Premises for Lessee's intended use. Lessee hereby accepts the Premises in said "as is, where is" condition and shall construct improvements thereon which are necessary for Lessee to occupy the Premises for its intended use.

b. Lessee Improvement Obligations. Lessee shall design and construct the Solar Facility in accordance with the PPA, including but not limited to, any timeframes and/or schedules identified therein,. Failure by Lessee to perform the work as required by the PPA shall be deemed a default of the PPA and, pursuant to Section 1.03, a default under this Lease.

c. Changes to Lessee Improvements. After the Effective Date, in the event new and/or additional equipment is needed by Lessee and/or the Solar Facility shown on Exhibit "B" (which, as of the Effective Date, is identical to Exhibit B of the PPA), as applicable, needs replacement, Lessee shall notify City in writing of its desire to amend Exhibit "B" to this Lease. Said notice shall include a description of the equipment, an explanation as to the need to add and/or replacement said equipment, and the value (including the useful life) of said equipment. City shall review Lessee's request to amend Exhibit "B" and should the City accept Lessee's changes to the Solar Facility, by informing Lessee in writing, the parties shall replace Exhibit

“B” with a new exhibit entitled Exhibit “B-1” and so forth, without the need to formally amend the Lease. In the event the City does not agree to accept Lessee’s changes to the Solar Facility, the parties agree to hire an impartial third party familiar with the practices in the industry to determine the need for said changes to the Solar Facility together with value associated therewith. The determination of said third party shall be binding, with the costs of said third party to be borne by the parties equally. Thereafter, Exhibit “B” will be changed accordingly as described above.

1.05 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.06 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

1.07 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however the City specifically retains the following rights provided that they do not interfere with Lessee’s right to operate the maintain the Solar Facility in accordance with the PPA:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of twenty (20) years and one-hundred and eighty (180) days commencing on the Commercial Operation Date, as such term is defined in the PPA (“Commencement Date”), or (if longer) the term of the PPA (the “Term”). Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in Exhibit “C” attached

hereto and by this reference made a part of this Lease.

2.02 Feasibility Period. Beginning the Effective Date, Lessee shall conduct its feasibility analysis of the Premises and use thereof as follows:

a. **Due Diligence.** Lessee shall have until March 30, 2011 to conduct its due diligence of the Premises to determine the condition of the Premises for Lessee's intended use. Due diligence shall include, but not be limited to, geotechnical analysis, availability of utilities and ingress and egress to the Premises.

2.03 Installation Period. Prior to the actual Commencement Date of the Lease and upon obtaining any required regulatory approvals, Lessee shall be given the right to enter upon the Premises in order to complete the Solar Facility at the Premises (or the portion thereof so as to allow occupancy of the Premises), as of the Effective Date, provided such right of entry is subject to and in compliance with the terms, conditions, covenants and provision of this Lease, including, but not limited to Section 4 herein. It is further agreed by the parties that Lessee shall have the opportunity to more particularly describe the Solar Facility, as set forth in Section 1.04(c) once Lessee has processed the Solar Facility for regulatory approval as provided in the PPA..

2.04 Early Termination. City shall have the right to terminate this Lease only:

- (i) If the PPA has been terminated by City as a result of an event of default by Lessee thereunder;
- (ii) If the PPA has been terminated pursuant to Sections 17.1 or 17.2 of the PPA; or
- (iii) As provided in Section 6.11 hereof.

2.05 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to, and pay monthly, the Rent as set forth in this Lease or the fair market value for similar operations in the Southern California area, whichever is higher during the holdover period.

2.06 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.07 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim

deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

2.08 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.09 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. Rent (as hereinafter defined) payments shall be due to City and payable by Lessee on the Commercial Operation Date, in the amount of \$20.00, representing the rent for the entire Term.

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

- a. **General.** The total annual rent amount shall be \$1.00.
- b. **Other Consideration.** As provided in Section 5.03 herein.

3.03 Utilities. Lessee agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.04 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to City for inspection

at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City is a default of this Lease. These records include but are not limited to generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

3.05 Delinquent Payments. If Lessee fails to pay any amount when due, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) being a total of ten percent (10%) which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful conduct of the Lessee, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the Lessee, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering the Solar Facility and all, trade fixtures, merchandise and personal property in the Premises, alterations and additions made by Lessee, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** City, at its discretion, may request the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice. City's requirements shall be designed to assure reasonable protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees (at City's cost) to obtain any additional insurance required by City for any new improvements made by City.

4.03 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including without limitation, the dirt access road in the Premises which provides ingress/egress into the Premises from the public street provided, however, Lessee's responsibility and cost of said dirt access road in the Premises (in the event that said access road is used by others, including but not limited to, other third parties, the general public and the City) shall be limited

to Lessee's prorata share thereof, as determined by City, in its reasonable discretion. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. Except as set forth in Exhibit "B", no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises (but not including the Solar Facility) without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory

note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the Solar Facility and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.08 Signs. Except as set forth in Exhibit "B" Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.09 Ownership of Improvements and Personal Property.

a. The City confirms that the Solar Facility and all components therefor shall be deemed personal property, and the Lessee (or its financing party) shall have title to such property.

b. If City elects not to purchase the Solar Facility at the end of the Term Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. If any removal of the Solar Facility by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.10 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken. In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is unsuitable for continued lease operation, Lessee may request that City provide Lessee with a Substitute Premises pursuant to Section 5.10(e) below.

c. **Transfer.** City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, City shall provide Lessee with Substitute Premises as specified in Section 5.10(e) below.

d. **Award.** In the event that the Lease is terminated as a consequence of events described in clauses (a), (b) or (c) above, then all monies awarded in any such taking of the Premises or paid to the City upon the transfer of the City's interest in the Premises pursuant to clause (c) above, shall belong to the City. City shall have no liability to Lessee for any condemnation award or payments made pursuant to Section 5.10(c) except as specified in Section 5.10(e) below and as may be applicable pursuant to the default provisions of the PPA.

e. **Substitute Premises.** In the event of a partial or total taking (by an authority other than the City) or a transfer of the City's interest in the Premises pursuant to Section 5.10(c) above, prior to the Expiration Date, then City shall provide Lessee with a mutually agreeable Substitute Premises in a location with similar solar insolation. City shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, City and Lessee shall amend the PPA and Lease to specify the Substitute Premises. City shall also provide any new owner, lessor, or mortgagee consents or releases required by Lessee's "Financing Party," as defined in the PPA, in connection with the Substitute Premises. City shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Lessee in connection

with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such Substitute Premises and all applicable interconnection fees and expenses at the Substitute Premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refileing the security interest of Lessee's Financing Party in the System. Lessee shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of City's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. In connection with any substitution of Premises, City shall continue to make all payments for the "Output," as defined in the PPA, and City shall reimburse Lessee for any lost revenue during any transfer or construction time period (the "Transfer Time"), including any lost revenue associated with Output, any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits during the Transfer Time. For the purpose of calculating Output and lost revenue for such Transfer Time, Output shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation). For avoidance of doubt, City's failure to provide Lessee with a Substitute Premises as required by this Section shall constitute an Event of Default pursuant to Section 5.1.3 of the PPA.

f. No Inverse Condemnation. The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

5.11 Damage or Destruction to Improvements.

a. City Reconstruction and Termination Right. If the City Improvements upon the Premises are damaged or destroyed by any risk against which City has insured, City (subject to being able to obtain all necessary permits and approvals) may, within one hundred and twenty (120) days after such damage or destruction elect to terminate the Lease or repair and reconstruct the Premises to substantially the same condition as the Premises were originally delivered to Lessee. City shall not be liable for interruption to Lessee's operation or for damage to or for the repair or reconstruction of any items which Lessee is required to insure.

b. Lessee Reconstruction and Termination Right. If any item which Lessee is required to insure pursuant to the terms of this Lease is damaged or destroyed by fire or other risks to be so insured, Lessee (subject to being able to obtain all necessary permits and approvals) has the option to repair or reconstruct pursuant Subsection 5.11(a) or may terminate this Lease.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other,

shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054

Attention: Real Estate Manager

To Lessee:

Prior to Commencement Date

SunEdison
12500 Baltimore Avenue
Beltsville, MD 20705

After the Commencement Date

At the Premises

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to

City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease together with the PPA contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Redevelopment Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises is City owned and held in trust for the benefit of the citizens of the City

of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. Notwithstanding anything to the contrary in Section 5.06, Lessee may directly assign, or collaterally assign, this Lease to any permitted direct or collateral assignee of the PPA. The provisions of Section 21.5 of the PPA (Cooperation with Financing) are incorporated by reference as if set forth in their entirety.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements of this Lease or of the PPA; or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within five (5) days after written notice thereof if default is in the submittal of amounts due as required in this Lease; or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition or agreement (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under any encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within five (5) days, if the default is for the failure to submit rent as required, or within fifteen (15) days following the expiration of the period within which Lessee may cure such default,

provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or earlier termination of this Lease under the provisions of Sections 5.10 and 5.11 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.02 Hours of Operation. The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the City.

7.03 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises

to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.05 Merchandise and Equipment. City retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City.

7.06 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.07 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

7.08 Memorandum of Lease. City and Lessee agree the Lease shall not be recorded and that the parties shall execute a Memorandum of Lease to be recorded. The form of this Memorandum of Lease is as shown on Exhibit "D" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SECTION 8: SIGNATURES

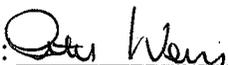
8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease to Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date 8-19-10

By: 
City Manager

APPROVED AS TO FORM:

By: 
City Attorney

LESSEE

SUNEDISON ORINATION1, LLC

Date 8/2/10

By: 
Name: Vice Pres James Garcia
Title: Vice President

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 2nd day of August, 2010 before me, Deborah A. Donovan, a Notary Public, within and for said County and State, personally appeared James Scarrow to me personally known to be the Authorized Representative SunEdison Government Solutions, LLC and acknowledged that he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Maryland
County of Montgomery

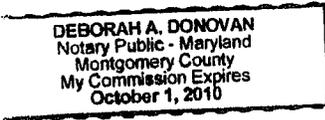


EXHIBIT "A"

LEGAL DESCRIPTION

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING THE EASTERLY 475 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF WHALEN LAKE ROAD

EXHIBIT "B"**DESCRIPTION OF SOLAR FACILITY**

Solar System Premises:	San Luis Rey Water Treatment Facility 3940 North River Road Oceanside, CA 92058
Anticipated CSI PBI	\$.09/kWh for the first five years of kWh delivery
Estimated Solar System Size:	1025 kW (DC)
Scope:	Design and supply grid-interconnected, ground-mounted single axis tracking solar electric (PV) system.
Module:	Suntech 280s (or equivalent)
Inverter:	IEEE 1547 qualified

EXHIBIT "C"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____ is executed between the City of Oceanside, a municipal corporation ("CITY") and SunEdison Origination1, a Delaware limited liability company ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE have entered into that certain Property Lease Agreement ("Lease") dated August 18, 2010 for premises at the San Luis Rey Wastewater Treatment Plant, 3950 N. River Road in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease the parties are to execute a memorandum to confirm the commencement date of the Lease.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

- 1. The CITY and LESSEE agree that the commencement date of the Lease is _____ and the termination date is _____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"

City of Oceanside
a municipal corporation

By: _____

(name)

Title: City Manager

"LESSEE"

SunEdison Origination1,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT "D"

MEMORANDUM OF LEASE

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

(For Recorder's Use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of August 18, 2010, by and between THE CITY OF OCEANSIDE, a municipal corporation ("Landlord") and SunEdisonOrigination1, a Delaware limited liability company ("Tenant").

Landlord and Tenant have entered into that certain Property Lease Agreement dated August 18, 2010 ("Lease"), pursuant to which Landlord has leased to Tenant, and Tenant has leased from Landlord, that certain property located in the City of Oceanside, County of San Diego, State of California and more particularly described in Exhibit "A", which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Lease. The purpose of this Memorandum is to give notice of the existence of the Lease and the provisions thereof, including without limitation provisions providing for the expiration of the Lease term on August 18, 2030. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

“LANDLORD”

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____

Name: _____

Title: _____

“TENANT”

SUNEDISON ORIGINATION I
a Delaware limited liability company

By: _____

Name: _____

Its: _____

Title: _____

FIRST AMENDMENT

This First Amendment ("Amendment") is entered into as of December 2nd, 2010 ("Effective Date") by and between, SunEdison Origination1, LLC, Delaware limited liability company ("Power Provider") and the City of Oceanside ("Host Customer").

RECITALS:

WHEREAS, Host and Provider entered into that certain Property Lease Agreement, dated August 18, 2010 ("Agreement"); and

WHEREAS, certain typos were discovered in the body of the Agreement and Host and Provider desire to amend the Agreement as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Amendments. The Agreement is amended as set forth below:

1.1 Section 3.01 of the Agreement is hereby deleted and replaced with the following:

3.01 Time and Place of Payment. Rent (as hereinafter defined) shall be due to City and payable by Lessee on the Commercial Operation Date, in the amount of \$20.00, representing the rent for the entire Term.

Check payment should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn.

1.2 Section 7.04 is hereby inserted into the Agreement as follows:

7.04 **[RESERVED]**

2. Miscellaneous.

2.1 This Amendment shall be governed and construed in accordance with the domestic laws of the State of California without reference to any choice of law principles.

2.2 This Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

2.3 Except as expressly set forth in this Amendment, the Agreement shall continue to be in full force and effect and is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first written above.

POWER PROVIDER SunEdison Origination 1, LLC
By: <i>James Scarran</i>
Name: <i>James Scarran</i>
Title: <i>Authorized Representative</i>
Date: <i>11/10/2010</i>

HOST CUSTOMER City of Oceanside
By: <i>Peter Weiss</i>
Name: <i>PETER A. WEISS</i>
Title: <i>CITY MANAGER</i>
Date: <i>12-2-10</i>

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

LEGAL DEPT.
Approved as to Form
Initials: *JWS*
Date: _____

APPROVED AS TO FORM OCEANSIDE CITY ATTORNEY <i>Barbara L. Hamilton</i> BARBARA L. HAMILTON Assistant City Attorney
--

ACKNOWLEDGEMENT BY PRINCIPAL

STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 10th day of November, 2010 before me, Deborah A. Donovan, a Notary Public, within and for said County and State, personally appeared James Scarrow to me personally known to be the Authorized Representative Sun Edison Origination 1 LLC and acknowledged that he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Maryland
County of Montgomery

