

POWER PURCHASE AGREEMENT (PPA)

For the purchase of energy
supplied by renewable resources

The City of California City
Located within Kern County, California

Contacts:

Power Purchase Agreement Attachments “PPA” and Exhibits

Power Purchase Agreement (PPA)

- Exhibit 1 – Pricing, Guaranteed Minimum Production, Billing Methodology
- Exhibit 2 – Billing Formulas and Examples
- Exhibit 3 – Sample Invoice
- Exhibit 4 – Termination Fee Schedule

POWER PURCHASE AGREEMENT (PPA)

THIS POWER PURCHASE AGREEMENT (the “PPA”) is made this **19th** day of **August, 2014** (the “**Effective Date**”) by and between **The City of California City** (“**BUYER**”) located at 21000 Hacienda Blvd. California City, CA 93505 and **American Solar Utility LLC** (“**SELLER**”) a California limited liability company located at 1470 Civic Ct. Concord, CA 94520. BUYER and SELLER are sometimes referred to in this PPA collectively as the “**Parties**” and each, individually, as a “**Party**”.

WHEREAS, BUYER and SELLER desire to agree to terms for the production and sale of renewably generated electricity to serve BUYER’s facilities by way of this PPA. BUYER has pumping stations and other uses of electricity within the City boundaries and owned property that SELLER plans on offsetting that energy usage with energy generated from SELLER’s System.

WHEREAS, SELLER has leased 40 acres of property within the city limits of California City and desires to build a 1.7 MW ac PV solar system for generating renewable energy electricity. A portion of the property will be used to supply BUYER power for net-metering interconnection to the Southern California Edison grid.

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

1. DEFINITIONS

In addition to the terms that are defined elsewhere in this PPA, the following terms have the following meanings when used herein:

- 1.01 “**Annual Degradation Factor**” is defined in Exhibit 1 Section 2.
- 1.02 “**Applicable Laws**” refers to the laws of the State of California.
- 1.03 “**BUYER**” means the City of California City (also known herein as the “**City**”), that is within the County of Kern and State of California. BUYER includes all of its governmental organizations or agencies.
- 1.04 “**Commercial Operation Date**” means the date of receipt of Southern California Edison (SCE) approval for operation of the system.
- 1.05 “**Contract Price**” means the price of Electricity pursuant to Exhibit 1 of the PPA.
- 1.06 “**Electricity**” means electrical energy, measured in kilowatts and kilowatt-hours that (a) is produced by the System, (b) is delivered by SELLER to BUYER at the Electrical Interconnection Point(s), and (c) conforms to applicable utility and/or authoritative regulatory body standards.
- 1.07 “**Electrical Interconnection Point**” means the point(s) specified in the project design where the System connects to the existing electrical systems or newly established electrical systems serving the Facilities.

- 1.08 **“Energy Management System”** means the American Solar Utility LLC automatic controls system capable of receiving energy production data from the System.
- 1.09 **“Energy Service Provider”** means an investor owned Utility, a municipal utility, or other electricity provider that serves electricity commodity to the Facility and/or BUYER. The Energy Service Provider herein is Southern California Edison (hereinafter known as **“SCE”** or **“Utility”**).
- 1.10 **“Environmental Law(s)”** means each and every applicable federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state, and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment.
- 1.11 **“Expected Production”** set forth in Exhibit 1.
- 1.12 **“Facility”** or **“Facilities”** means the land or improvements owned, leased, and/or operated by either Party on which the System will be installed; possible system installation on BUYER property dependent on BUYER’S written approval. The planned System to be built will be located on SELLER’s leased property with a portion of said property dedicated to producing electricity to the BUYER through a Net-Metering arrangement.
- 1.13 **“Failure to Achieve Guaranteed Minimum Production Penalty”** set forth in Exhibit 1.
- 1.14 **“Fiscal Year”** means BUYER’S Fiscal Year, beginning on July 1st of each calendar year and ending on June 30th of the following calendar year.
- 1.15 **“Force Majeure”** means an act of God or nature (such as earthquakes, fires, riots), actions or inaction’s of a regulatory authority, or actions of others such as strikes, lockouts, or other industrial disturbances, not within the control or arising from the fault of the party claiming Force Majeure. Any party claiming Force Majeure shall advise the other party as soon as possible of the occurrence of the event and shall provide the other party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. A change in law (City, County, State or Federal) or changes made by the California Public Utilities Commission (**“CPUC”**) or Federal Energy Regulatory Commission (**“FERC”**) that negatively affects the ability of the SELLER to provide the electricity to the BUYER constitute a Force Majeure action..
- 1.16 **“Guaranteed Minimum Production”** as described in Exhibit 1.
- 1.17 **“Hazardous Material”** means, without limitation, any substance defined as hazardous substance, hazardous waste, extremely hazardous waste, or material known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115,

25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; and any substance regulated pursuant to any Environmental Law(s). The term Hazardous Material includes, but is not restricted to, asbestos, polychlorobiphenyls (“PCBs”) and petroleum.

- 1.18 “**Interest Rate**” means the then-current prime rate for Wells Fargo, N.A., as that rate is announced from time to time.
- 1.19 “**Lender**” means any financial institution, private Limited Liability Company, Corporation, or other privately held entity to which SELLER has pledged or collateral assigned SELLER’s rights under this PPA and its rights to payment and a first security right in the System.
- 1.20 “**Operational Year**” means each twelve-month period commencing on each anniversary of the Commercial Operation Date.
- 1.21 “**Net-Metering**” is a service to an electric consumer of the Utility company under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric Utility to the electric consumer during the applicable billing period.
- 1.22 “**PPA**” means this Power Purchase Agreement, in its entirety, between the Parties for the purchase and sale of Electricity from the System.
- 1.23 “**Renewable Energy Credit/s**” and or “**REC/s**” means renewable energy credit(s) or; certificates, emission reduction credits, investment credits, production tax credits, emission allowances, green tags, tradable renewable credits, and or products related to renewable energy production and is a commodity that is; based upon system size, and/or separated/unbundled from electric service or production.
- 1.24 “**SELLER**” means the party to this PPA that will install and own the System and sell Electricity to the BUYER at the Facility. This may consist of a new or different entity or fund that has been designated herein as the SELLER.
- 1.25 “**State**” means the State of California.
- 1.25 “**System**” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, meters, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, and wiring installed at the Facility for the purpose of generating Electricity to be purchased by the BUYER.
- 1.26 “**Term**” has the meaning set forth in Section 3.
- 1.27 “**Termination Fee**” means the payment by BUYER, described in Exhibit 4 hereof, upon early termination of this PPA.
- 1.28 “**Utility**” means the local provider of electric transmission and distribution services to BUYER in the absence of the System. This is Southern California Edison which serves the California City area electricity through the electrical grid.

2 AGREEMENT

- 2.1 Sale of Electricity by SELLER. SELLER will sell to BUYER all grid tied Electricity produced by the System during the Term, at the price per kilowatt-hour as specified in Exhibit 1. SELLER maintains all rights to the REC/s produced and or generated from the System and consistent with Section 6 and Exhibit 1 Section 5.
- 2.2 Purchase of Electricity by BUYER. BUYER will purchase from SELLER all Electricity that meets the specifications set forth in Exhibit 1. Notwithstanding the foregoing, nothing contained within this Agreement shall prevent BUYER from entering into an agreement with any other party regarding purchase of electricity.
- 2.3 Installation of System Components. SELLER will install the system components necessary to deliver the renewable energy provided by SELLER at or on the Facility. The renewable energy will be generated at the facility and is solely at the option of the SELLER to determine the best solution for each site and/or selected for offset under this PPA.
- 2.4 Services Provided by SELLER. SELLER will provide electricity pursuant to Exhibit 1 of this PPA.
- 2.4.1 METER. SELLER will measure the actual amount of Electricity generated and the amount utilized / delivered to BUYER by the SELLER at each of the Electrical Interconnection Points utilizing a commercially available revenue grade interval data-recording meter (the "**Meter**"). The Meter and its associated service account/s are to be under the name of the BUYER with the Utility. Meter location/s and allocated Electricity from the System in Kilowatt Hour/s ("**kWh/s**") to those Meters will be agreed to by the Parties in the application sent for Net-Metering to the Utility. The System located at the Facility will generate Electricity that passes through the Meter and records the generated renewable energy Electricity in Kilowatts. The Meter is then downloaded and provides incremental time periods that then are translated into kWh's and then credit applied for Time of Day ("**TOD**") or Time of Use ("**TOU**") multipliers for economic or dollar value provided in Utility company Tariff. This value offsets the charges that the Utility bills BUYER for.
- a. The Meter shall be installed and maintained at SELLER's expense and shall have standard industry telemetry capabilities. SELLER shall make the Meter data readily available in secure web format to BUYER upon request. Should the facility be located on BUYER owned and operated property, BUYER will allow internet access for meter reading through the telecom room and allow connection through the buildings or facilities to connect to that circuit. Local electrical power will be supplied by BUYER, via the meter/s, to power secure router/s and switch/es.
 - b. SELLER will have the Meter calibrated every five years at SELLER's expense by a certified, independent, third party. SELLER shall provide notice of the testing to BUYER at least ten (10) business days prior to the test date. SELLER shall provide signed copies of the results of the Meter calibration test BUYER. SELLER shall test the Meter at any reasonable time upon the request of BUYER. BUYER shall reimburse SELLER for the cost of any test requested by BUYER, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or as such defined by the California Public Utilities Commission for meter calibration and operation.

- c. If a Meter is determined to be inaccurate and such inaccuracy exceeds industry standard tolerance allowances, as such are defined by the California Public Utilities Commission for electric meters, and if it is unknown when the Meter inaccuracy commenced, then the invoices covering the period of time since the last Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one half of such period. Adjustments that benefit the BUYER shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments that benefit SELLER shall be included on SELLER's next invoice to the BUYER.

2.4.2 Billing System: SELLER will bill BUYER and BUYER will pay SELLER for Electricity at the rate and in the manner set forth in Exhibits 1, 2, and 3.

2.4.2.1 Customer Service: SELLER will provide the following during the Term:

- a. SELLER will produce and send bills to BUYER or its designee within fifteen (15) business days after the end of each billing cycle.
- b. SELLER will post Meter reads to a password protected web site and make this web site available to BUYER.

2.4.2.2 Billing Validation and Verification. BUYER may during the Term conduct occasional billing inquiries, validation and verification activities, or reconciliation procedures. During such BUYER inquiries, activities, and procedures, SELLER shall provide BUYER with the data and other information, including any billing algorithms and interval Meter data representing System output, used to generate billing determinants. BUYER will use its best efforts to provide or arrange for Utility metered interval data and billing data and information that can support SELLER's billing process, either directly through a data file transmission, receipt through regular mail services, or through the appropriate and established arrangement with the Utility. For purposes of this paragraph, Parties agree that "**Best Efforts**" means that the BUYER will authorize the applicable Utility to provide metered interval data and billing data and information directly to the SELLER, as per the Utility's rules and applicable regulations.

2.5 Maintenance of Facility. At all times during the term of this Agreement, SELLER shall maintain the System in compliance with all performance standards under federal, state, or local regulation and shall ensure the System is safe and in good working condition.

3 **TERM AND TERMINATION**

TERM. The Term of this PPA shall commence on the Effective Date and shall continue to apply for a period ending at 11:59 P.M. on the day preceding the twentieth anniversary of the Commercial Operation Date unless terminated earlier by a party pursuant to the terms of this PPA.

3.1 BUYER Termination Rights. BUYER shall have the right to terminate this PPA as follows:

3.1.1 For Cause. BUYER may terminate this PPA (a) pursuant to Section 10.2, below as a result of SELLER's default; or (b) thirty (30) days after delivery of written notice to SELLER and any Lender who has a security interest in the System if a Force Majeure event has

occurred and SELLER is unable to produce Electricity for more than 180 consecutive days.

- 3.1.2 For Convenience. In addition to the termination rights in Section 3.1.1, above, BUYER may terminate this PPA for convenience, sixty (60) days after delivery of written notice to SELLER and any Lender. If BUYER terminates this PPA for convenience pursuant to this section BUYER shall pay SELLER a Termination Fee as described and calculated in Exhibit 4, attached.
- 3.2 SELLER Termination Rights. SELLER shall have the right to terminate this PPA at any time on ninety (90) days written notice to BUYER, without further liability, if any of the following occur: a) If, prior to the first date of scheduled delivery of Electricity, SELLER determines that the System cannot be built as planned or that its construction and operation would not be economically viable for the SELLER, including SELLER's determination that the installation of the System is not economically viable as a result of the need to comply with any environmental regulation. SELLER will be responsible for repairing any damage to any BUYER owned or leased property arising from activities conducted by SELLER pursuant to this PPA and shall reimburse BUYER for any direct costs associated with negotiation, review and approval of the PPA, reasonable alteration to the physical area in or around the Facility site if Facility is located on BUYER owned or leased property; b) Upon occurrence of a Force Majeure, including, but not limited to; SELLER's inability, after diligent efforts, to obtain or maintain required approval or permits from any governmental authority for the installation or operation of the System, change to the contracts signed with SCE, or inability to receive any incentive or REC, by SELLER, material to the financial viability of the system; c) In the event that, through no fault of SELLER and for other than a Force Majeure event, the System is permanently shut down due to renovation, damage, destruction or closure of the Facility, and the Parties cannot agree upon an alternative location for the System (as defined in Section 12.2); d) Upon an Event of Default by BUYER (as defined in Section 10.3).
- 3.3 Removal upon Termination. It is understood and agreed that the BUYER, as a municipal entity, has a strong interest in preserving a compatible and harmonious environment within the City and an interest in preventing nuisances and/or eyesores resulting from abandoned or disused facilities. Upon termination of this Agreement, SELLER shall, within three hundred and sixty five days (365) days, remove the System at its own cost and shall otherwise restore the real property underlying the System to its pre-installation condition, reasonable wear and tear and casualty excepted
- 3.4 Notwithstanding the foregoing, SELLER will be excused from the obligation to remove the System to the extent SELLER has committed to sell Electricity from the System, or portion thereof, to another party, as evidenced by an executed agreement for such sale

4 ENVIRONMENTAL COMPLIANCE

If SELLER has not yet completed its analysis and related obligations under CEQA as of the Effective Date, SELLER shall not be required to install the System until the CEQA is completed and a building permit has been issued by the lead governmental agency.

5 GUARANTEED MINIMUM PRODUCTION

SELLER has estimated that the System will deliver the Expected Production as indicated in Exhibit 1. SELLER Guaranteed Minimum Production from the System is defined as and

calculated by multiplying 80% of the Expected Production from the System over the course of an Operational Year commencing with the Commercial Operation Date. If SELLER fails to meet the Guaranteed Minimum Production requirement on an Operational Year basis, for reasons other than the BUYER's shading of the System, as described in Section 13 below, SELLER will pay BUYER, or BUYER may, at its option, offset against future payments due SELLER, an amount equal to the Failure to Achieve Guaranteed Minimum Production Penalty. The formula for calculating the Failure to Achieve Guaranteed Minimum Production Penalty is found in Exhibit 1 section 7 to this PPA. If SELLER fails to pay BUYER the amount due for any annual shortfall of the Guaranteed Minimum Production within 60 days after notice to make such payment, BUYER shall have the express right to withhold payment, up to the shortfall amount due. BUYER agrees that System performance will degrade by an Annual Degradation Factor as indicated in Exhibit 1 Section 2 of this PPA for every year of operation. As reflected in Table 1.1 of Exhibit 1, the Expected Production will be reduced by the Annual Degradation Factor every Operational Year for the term of this PPA. The Annual Degradation Factor will be applied to the kWh energy values of the Expected Production at the beginning of each Operational Year. A determination on whether or not the SELLER has met the Guaranteed Minimum Production will be made on a biennial basis commencing with the end of the second Operational Year after Commencement of Operations. An Annual Degradation Factor will be applied on a pro rata basis for System operations that do not span an entire Operational Year by multiplying the Annual Degradation Factor times the fraction of the Operational Year.

6 POTENTIAL REVENUE FROM RENEWABLE ENERGY CREDITS

SELLER will own 100% of all REC's associated with this project. SELLER may, at its sole discretion, market and/or sell the REC's at any time. All proceeds of REC sales will belong to SELLER.

7 REBATES AND OTHER INCENTIVES

Any grant, rebate, incentive payment or credit by the Utility, the Federal Government, the California Energy Resources Conservation and Development Commission or any other agency paid as a result of the design, construction, operation and/or grid connection of the System shall inure to the benefit of the SELLER. BUYER will cooperate in good faith, at no cost to BUYER, as necessary to enable SELLER to obtain all available incentives and rebates, including assignment to SELLER of any rebate or incentive received by BUYER.

7.1 CALIFORNIA SOLAR INITIATIVE ("CSI")

The SELLER will file / apply for a CSI reservation for this project to the California Center for Sustainable Energy ("CCSE") in coordination with the Utility. The BUYER shall be designated as the HOST and SELLER as the OWNER and APPLICANT as required in the CSI Handbook. BUYER agrees to pass through all incentive payments received to the SELLER within 30 business days from receiving payment/s. If the CSI payment is not passed through within the 30 day period then the BUYER shall be charged 2.25% interest per month on the balance of the payment not received. All cost associated with the application for a reservation will be paid for by the SELLER. The BUYER shall reimburse the SELLER for all application and reservation fees and cost if the SELLER does not build the Systems and receive the incentive but BUYER is able to use the incentive. This

reimbursement shall be made upon a re-designation, change, and or assignment of the OWNER and or APPLICANT named on the reservation. This reimbursement shall be made within 30 business days from the change in the reservation document submitted to the Utility and or CCSE and shall not exceed the amount of the incentive received by Buyer. The SELLER has included the incentive to lower the System development cost to for that SELLER can provide a lower kWh Electricity rate that is reflected in this PPA.

8 EMERGENCIES

In cases of emergency in which BUYER determines that the continued operation of the System presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, the Parties agree that BUYER may disconnect the System from the point of interconnection prior to notification of SELLER. If BUYER disconnects the System pursuant to this provision, BUYER will notify SELLER no later than 8 hours after the System is disconnected. The Parties agree that only SELLER or an agent designated by SELLER will be authorized to reconnect the System after the System is disconnected by BUYER pursuant to this emergency section.

9 COMMUNICATIONS AND CONTACTS

The representatives of the parties during the term of this PPA will be:

EMERGENCY CONTACT SELLER:	EMERGENCY CONTACT BUYER:
Name: Dennis R. Mueller	Name: TBD
Phone: 916-223-0062	Phone:
Email: dmueller@americansolarutility.com	Email:

10 DEFAULT

10.1 Waiver. A waiver by either party of any term, covenant or condition of this PPA shall not constitute a subsequent waiver of the same or any performance thereof by the other party.

10.2 Default by SELLER. At the option of BUYER as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this PPA:

10.2.1 SELLER's failure to deliver Electricity, that is not through a Force Majeure event/s, from the System for a continuous period of ninety (90) days or for one hundred and twenty (120) days in any six month period.

10.2.2 Unreasonable interference by SELLER with the operations of BUYER at the Facility, if the interference is curable by suspension of operation of the System and SELLER fails to suspend operation of the System within 96 hours of BUYER'S notice to SELLER regarding the interference.

10.2.3 The filing of a petition to have SELLER adjudicated bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy unless in the case of

a petition filed against SELLER, the same is dismissed within one hundred and twenty (120) days; or the appointment of a trustee or receiver to take possession of substantially all of SELLER's assets located on the Facility or of SELLER's interest in this PPA, when possession is not restored to SELLER within ninety (90) days; or the attachment, execution or other judicial seizure of substantially all of SELLER's assets located on the Facility or of SELLER's interest in the License, when such seizure is not discharged within one hundred and twenty (120) days.

- 10.2.4 Failure by SELLER to perform or comply with any other material term of the PPA within ninety (90) days after written notice to SELLER and any Lender by BUYER, unless BUYER agrees in writing to a longer period to cure the default.
- 10.2.5 BUYER Remedies. If any default by SELLER shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, BUYER may resort to any one or more of the following remedies:
- 10.2.6 Termination. BUYER may terminate this PPA by providing written notice to SELLER indicating that the PPA has been terminated.
- 10.2.7 Recovery of Damages and Expenses. BUYER may recover from SELLER any damages and expenses reasonably incurred as a result of SELLER's Default, including attorneys' fees and the cost to repair the Facility to near pre-installation condition. BUYER is not entitled to damages for future energy production or saving after the termination of the PPA has occurred and thereafter, including the entire remaining Term of this PPA and residual value. BUYER agrees not to claim damages against SELLER for loss of business, loss of revenue or business interruption.

LIMITATION OF LIABILITIES: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PPA, NEITHER BUYER NOR SELLER NOR ANY OF EITHER OF THEIR SUCCESSORS OR ASSIGNS, OR THE RESPECTIVE MANAGERS, SUPERVISORS, SHAREHOLDERS, MEMBERS, PARTNERS, ASSIGNS, DIRECTORS, OFFICERS, PUBLIC OFFICIALS, AGENTS OR EMPLOYEES OR REPRESENTATIVES OF EITHER OF THEM, SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING REVENUES FROM LOST POWER, LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOSS OF REVENUES OR PROFIT AND THE BUYER AND SELLER EACH HEREBY RELEASES THE OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY. THE FOREGOING EXCLUSION SHALL NOT BE CONSTRUED TO LIMIT RECOVERY UNDER ANY INDEMNITY. IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY FOR THE DAMAGES OF THE OTHER PARTY (INCLUDING PERSONS CLAIMING THROUGH THE OTHER PARTY) UNDER ANY EQUITY, COMMON LAW, CONTRACT, ESTOPPEL, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER THEORY, REGARDLESS OF THE FORM OF ACTION, ARISING OUT OF THE AGREEMENT EXCEED THE PPA REMAINING YEARLY SUMS AS SHOWN IN EXHIBIT 1, SECTION 1, TABLE 1.1, COLUMN 80% OF EXPECTED COST.

- 10.2.8 Right of Offset. BUYER may elect to offset any damages resulting from SELLER's default against any monies owing or to be owed to SELLER under this PPA. If BUYER elects not to terminate the PPA following an Event of Default by SELLER then the default shall be

cured and put the SELLER back into good standing, this election shall not constitute a waiver by BUYER as to any subsequent Event of Default by SELLER.

- 10.3 Default by BUYER. At the option of SELLER as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this PPA:
- 10.3.1 BUYER'S failure to pay undisputed invoices for a continuous period of 180 or more days
- 10.3.2 The renovation, damage, destruction or closure of the Facility, for other than a "**Force Majeure**" event, which results in the permanent shutdown of the System at the Facility, if BUYER and SELLER are unable to agree upon an alternative location for the System as defined in Section 12.2 below.
- 10.3.3 BUYER'S refusal to sign authorizations reasonably required by SELLER to obtain any rebate, incentive, or subsidy contemplated in Section 7 above or BUYER'S refusal to sign or comply with any material term of the approved interconnection agreement required by the Utility for interconnection of the System.
- 10.3.4 Failure by BUYER to perform or comply with any other material term of this PPA within sixty (60) days after written notice by SELLER, unless SELLER agrees to a longer period to cure the default.
- 10.3.5 SELLER Remedies. If any default by BUYER shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, SELLER may resort to any one or more of the following remedies:
- 10.3.5.1 Termination. SELLER may terminate the PPA by providing written notice to BUYER indicating that the PPA has been terminated.
- 10.3.5.2 Damages. In the event of a termination under section 10.3.5.1, above, BUYER shall pay to SELLER a Termination Fee, calculated as set forth in Exhibit 4. The Parties acknowledge and agree that in the Event of Default of this PPA by BUYER, SELLER's actual damages would be difficult or impossible to compute and that this Early Termination Fee calculation provision represents the reasonable estimate of such damages established by the parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this PPA as of the effective date.
- 10.3.5.3 Removal. In addition to the other remedies specified herein, SELLER may remove the System at its own cost, provided that any Facility located on BUYER owned or leased property is restored to a condition substantially similar to the pre-installation condition subject to ordinary wear and tear as called for by this BUYER.
- 10.4 Failure of SELLER to Perform Required Acts. Subject to SELLER's right to contest as provided elsewhere in this PPA, if SELLER fails, refuses, or neglects during the Term to do any of the things required to be done by SELLER, BUYER shall have the right, but not the obligation, to do the same, but at the cost of and for the account of SELLER. Unless BUYER reasonably believes that its interests may be adversely affected by such delay, BUYER shall in no case take such action sooner than one hundred and eighty (180) days after giving SELLER written notice of such failure, refusal or neglect. SELLER shall pay to BUYER on demand any sum expended by BUYER under this Section 10.4 together with interest thereon as defined in Section 1.18. Nothing contained in this Section 10.4 shall

impair the rights of BUYER with regard to defaults or remedies under the remaining portion of this Section 10.

- 10.5 Force Majeure. Any party claiming Force Majeure with respect to its performance hereunder shall advise the other party as soon as possible of the occurrence of the event and shall provide the other party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Each party shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance
- 10.6 Arbitration and Dispute/s Resolution. The Parties shall perform their responsibilities under this PPA during any dispute, except for a dispute alleging non-payment of payments due by the BUYER to SELLER. The parties will attempt in good faith to resolve any disputes between them through negotiations. If they are unsuccessful, all claims arising out of this PPA will be decided through binding arbitration. If the parties cannot agree to the arbitrator and arbitration process, the arbitration will be conducted under the auspices of the American Arbitration Association under its Rules and shall take place in Kern County, California. In the event of any dispute or claim arising out of this PPA, the prevailing party shall be entitled to an award of its attorney fees and costs incurred, including those on appeal, on review or in bankruptcy. The parties agree to consolidate their arbitration with any other arising from the PPA

11 **TEMPORARY SHUTDOWN OF SYSTEM**

- 11.1 In-lieu Payments or Extension of PPA. If, during the Term, renovations or damage to the Facility occurs ,for reasons other than a Force Majeure, which significantly reduces (greater than 50% of Expected Production) or eliminates the use by BUYER of Electricity from the System or requires the temporary shutdown of the System, the Parties may, by mutual consent agree to extend the Term by one day for each day that the System was shut down.
- 11.2 Notice. SELLER will make a good faith effort to give as much notice as possible to BUYER prior to System shutdown. SELLER must coordinate a System shutdown with BUYER.

12 **RESERVED**

13 **RESTRICTIONS ON SHADING**

- 13.1 BUYER will make all good faith efforts to avoid activities which result in overshadowing or shading of the System in a manner that would prevent SELLER from meeting the Expected Production as described in Exhibit 1. In the event that BUYER activities result in the System being overshadowed in manner that causes the System to produce less than 95 percent of the Expected Production Output on a kWh basis over any twelve (12) month period, BUYER agrees to pay in-lieu fees up to the Expected Production as described in Section 11.1.2 for the duration of the period for which the shadowing occurs. SELLER shall provide and justify data verifying the actual loss of generation that occurred due to shading. BUYER shall not be required to pay such in-lieu fees unless SELLER

demonstrates to BUYER'S reasonable satisfaction that the loss in generation is due to shading attributable to the BUYER'S actions. Notwithstanding any other provision of this PPA, the Parties agree that if BUYER'S actions result in shadowing of the System such that the System produces less than 80 percent of the Expected Production, the Parties shall make every effort to relocate the System to a mutually agreeable location. If the Parties cannot agree on an alternative location for the System, then SELLER will be entitled to a Termination Fee pursuant to Sections 12, 10.3.5.1, and 10.3.5.2.

- 13.2 **"Permanent Shutdown of the System at the Facility"** and Exhibit 4. The Parties agree that shading resulting from actions outside of the control of BUYER shall not give rise to the remedies provided for in this Section.

14 **COMPLIANCE WITH APPLICABLE LAWS, INCLUDING UTILITY INTERCONNECTION STANDARDS**

SELLER, at its own cost and expense, shall comply with all Applicable Laws relating to the operation of the System and the generation and sale of Electricity to BUYER, including obtaining and maintaining all relevant approvals and permits. In particular, SELLER, throughout the term of the PPA, will fully comply with any and all operational standards and requirements imposed by the Utility, and comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff. BUYER will cooperate with SELLER and, if necessary, will provide consents and execute with the Utility such agreements (if such agreements do not have unacceptable or prohibited terms and/or conditions, or impose additional costs on BUYER) as are necessary to permit the interconnection of the System. This electrical interconnection shall be done at no cost or liability to BUYER, and SELLER shall reimburse BUYER for all out of pocket costs incurred in connection with any interconnection agreement. Should the Utility demand fees or equipment exceeding the SELLER's estimates for electrical interconnection requirements, SELLER may at its sole discretion cease to proceed with installation of the System without further obligation to BUYER other than the obligation to restore the Facility to near pre-installation condition if installation was initiated on BUYER owned or leased property.

15 **NON-DISCRIMINATION**

- 15.1 SELLER's Obligations. SELLER shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, and denial of family care leave. SELLER shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment, and shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this PPA by reference and made a part hereof as if set forth in full.

- 15.2 Inclusion in Subcontracts. SELLER represents and warrants that it shall include the substance of the nondiscrimination and compliance provisions of this clause in all subcontracts in connection with its obligations hereunder.

16 TAXES

SELLER shall pay all taxes, assessments or charges that at any time may be lawfully levied upon any interest in the Facility, the System, or this PPA. If local taxes or assessments are levied above the rates on the date of COD then those additional fees shall be split 50% is owed by the SELLER and 50% is owed by the BUYER.

17 ASSIGNMENT

- 17.1 The duties and obligations of SELLER under this PPA shall not be assignable by the SELLER in whole or in part without the written approval of BUYER. BUYER will not unreasonably withhold written approval.
- 17.2 Event of Default. In the event of default by any assignee of SELLER or any successor to SELLER in the performance of the terms hereof, BUYER may proceed directly against SELLER without the necessity of exhausting remedies against such assignee.
- 17.3 Unique Expertise. Notwithstanding the foregoing, SELLER acknowledges that BUYER is relying upon the unique expertise and capability of SELLER. Any proposed assignee must have demonstrated to the BUYER the ability to perform the obligations required under the PPA.
- 17.4 Definition of Assignment. For purposes of this section, the sale, assignment, transfer or disposition, directly or indirectly, of any type, which results in a change of control of SELLER, shall be deemed an assignment of this PPA. Change of control shall be as defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of SELLER. However, in no event shall the transfer of shares (i) to a Lender which assumes SELLER's obligations hereunder, or (ii) to another limited liability company of which SELLER is the managing member, or (iii) in an open market transaction sale of shares of a publicly held company be considered an assignment. SELLER shall have a continuing duty to provide BUYER with written notice of any material change in the SELLER'S business structure and/or financial status.
- 17.5 Buyer's Right of First Refusal to purchase the BUYERs portion of the Facility. In the event (i) SELLER determines to sell the portion of the Facilities that provides power to the BUYER, or (ii) of SELLER's bankruptcy or insolvency, or (iii) SELLER defaults on any encumbrance secured by the BUYERS portion of the Facility, , SELLER shall provide reasonable notice to BUYER of such desire to sell, with the amount of the offering price, or of such bankruptcy, insolvency, or default, with the amount or nature of such default. Upon receipt of such notice, BUYER, in its sole discretion, shall have the exclusive right for a period of sixty (60) days to (i) in the event of SELLER's desire to sell, purchase the Facilities, or portion thereof, in the amount of the offering price, or any lesser amount which SELLER may be willing to accept; (ii) in the event of bankruptcy or insolvency of SELLER, purchase the BUYERs portion of the Facility, or portion thereof, at fair market value as determined by independent appraiser agreed to by both Parties ; or (iii) in the event of SELLER's default on any encumbrance secured by the Facilities, or portion

thereof, cure said default, or with respect to defaults which cannot be reasonable cured within ninety (90) days, commence such cure and diligently pursue such cure.

18 FINANCING

- 18.1 Non-Subordination. BUYER will not subordinate its interest in the Facility as security for any SELLER loans or financing. However, and notwithstanding the provisions of Section 18.2, below, SELLER may pledge its interest in the PPA, including any rights to payment and the System, as security for loans or financing. If SELLER's Lender(s) requests additional terms and conditions to those already provided in this PPA, BUYER will consider any such requests, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions.
- 18.2 Security Interests in System. BUYER acknowledges that SELLER will be financing the acquisition and installation of the System with financing accommodations from one or more financial institutions and that SELLER's obligations will be secured by, among other collateral, a pledge or collateral assignment of this PPA and SELLER's rights to payment and a first security right in the System. In order to facilitate such financing, and with respect to any such financial institutions of which SELLER has notified BUYER in writing (each, a Lender) BUYER agrees as follows:
- 18.2.1 Classification of System as Personal Property. BUYER acknowledges that it has been advised that part of the collateral securing financial accommodations of SELLER is the granting of a first priority security interest ("**Security Interest**") in the System to Lender to be perfected by a filing under the Uniform Commercial Code ("**UCC**"). BUYER consents to such filings so long as they reflect the Parties' agreement that any filings to perfect or provide notice of the Security Interest clearly document the Parties' intent that the System is considered personal property only and is not considered a fixture to the Facility. These filings by SELLER or Lender may include filing of a Financing Statement (FORM UCC-1) which clearly covers the System as personal property only and not as a fixture.
- 18.2.2 Such filing shall not create any interest in or lien upon the real property underlying the Facility or the interest of BUYER therein and shall expressly disclaim the creation of such an interest or a lien.
- 18.2.3 BUYER will use commercially reasonable efforts to place its successors and assignees on notice of the ownership of the System by SELLER and/or Lender, the existence of the security interest, and the fact that the System is not part of the Facility or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- 18.2.3 BUYER is not aware of any existing lease, mortgage, security interest or other interest in or lien upon the Facility that could attach to the System as an interest adverse to Lender's security interest therein.

19 AMENDMENT

No amendment or variation of the terms of this PPA shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this PPA is binding on either party.

20 **AUDIT**

BUYER, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this PPA. SELLER will maintain such records for possible audit for a minimum of three (3) years after final payment under this PPA, unless a longer period of records retention is stipulated. SELLER will allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. Further, SELLER will include a similar right of BUYER to audit records and interview staff in any subcontract related to performance of this PPA.

21 **INDEPENDENT CONTRACTOR**

SELLER, and its agents and employees, shall act in an independent capacity and not as officers or employees or agents of BUYER in the performance of this PPA.

22 **TIMELINESS**

Time is of the essence in this PPA.

23 **GOVERNING LAW**

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

24 **UNENFORCEABLE PROVISION**

In the event that any provision of this PPA is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this PPA have force and effect and shall not be affected thereby. If the unenforceable provision has a detrimental effect on the ability of this PPA to function as intended for both parties, or causes a material change in the financial viability of this PPA for either party, then the parties will make a good faith effort to find an agreeable resolution. If Parties cannot find an agreeable resolution the SELLER may terminate this PPA and receive the Termination Fee (as defined in Sections 10.3.5.1 and 10.3.5.1, above, and in Exhibit 4).

25 **COUNTERPARTS**

This PPA may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one agreement after each party has signed such a counterpart.

26. **INDEMNITY**

SELLER agrees to defend, indemnify, hold free and harmless the BUYER, its elected officials, officers, agents and employees, at SELLER's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the BUYER, its elected officials, officers, agents and employees arising out of the performance of the SELLER, its employees, and/or authorized subcontractors, of the work undertaken

pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the SELLER, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the SELLER, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the BUYER, its elected officials, officers, agents and employees based upon the work performed by the SELLER, its employees, and/or authorized subcontractors under this Agreement, whether or not the SELLER, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the SELLER shall not be liable for the defense or indemnification of the BUYER for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the BUYER.

BUYER agrees to defend, indemnify, hold free and harmless the SELLER, its elected officials, officers, agents and employees, at BUYER's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the SELLER, its elected officials, officers, agents and employees arising out of the performance of the BUYER, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the BUYER, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the BUYER, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the SELLER, its elected officials, officers, agents and employees based upon the work performed by the BUYER, its employees, and/or authorized subcontractors under this Agreement, whether or not the BUYER, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the BUYER shall not be liable for the defense or indemnification of the SELLER for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the SELLER.

27 Guarantee of Savings

SELLER guarantees BUYER a minimum yearly savings of \$50,000.00 ("Guaranteed Minimum Yearly Savings"). Actual Yearly Savings is to be calculated by SELLER pursuant to Exhibit 5. Actual Yearly Savings will be calculated on a yearly basis, within thirty (30) business days of each anniversary of the Commercial Operations Date. Any amount of savings under the \$50,000.00 minimum yearly savings allocation shall be credited to BUYER in "Guaranteed Minimum Savings Shortfall Amounts". Guaranteed Minimum Savings Shortfall Amounts are to be calculated by subtracting the Guaranteed Minimum Yearly Savings (\$50,000.00) by the Actual Yearly Savings (Calculated by SELLER). Guaranteed Minimum Savings Shortfall Amounts are to be divided by 12 and incrementally awarded to BUYER in the form of equal credits on each monthly bill for the 12 months following the calculation of Guaranteed Minimum Savings Shortfall

Amounts (“Guaranteed Minimum Savings Credits”). Guaranteed Minimum Savings Credits shall constitute full payment for SELLER’S failure to achieve the Guaranteed Minimum Yearly Savings. BUYER may choose to exercise either the Guarantee of Minimum Yearly Savings OR the Failure to Achieve Guaranteed Minimum Production Penalty at BUYER’s sole discretion, and the exercising of one releases all liability associated with the other.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this PPA and intending to be legally bound hereby, BUYER and SELLER have executed this PPA as of the Effective Date.

SELLER:
American Solar Utility LLC

By: _____

TITLE: _____

BUYER:
The City of California City

By: _____

TITLE: _____

EXHIBIT 1

ELECTRICITY PRICING, GUARANTEED MINIMUM PRODUCTION, AND BILLING METHODOLOGY

1. Electricity Pricing

SELLER:

Starting Price: \$0.095 per kWh. The lowest or minimum price to be paid for electricity by BUYER will be \$0.095 per kWh. All other charges for electrical service fees from the Utility company (SCE) are the responsibility of the BUYER. These charges include but are not limited to; taxes, surcharges, demand charges, monthly and daily meter costs, service and repair fees.

Escalation Factor: 1.5% applied annually at the anniversary of the Commercial Operation Date

Rate Calculation: $R_n = R_{(n-1)}(1+e)$

Where: R_n = Current Rate per kWh $R_{(n-1)}$ = Rate per kWh Previous Year
 e = Rate of Escalation (in this case .015)
 n = current year of contract
 R_1 = the starting price of \$0.095 per kWh

Term: Twenty (20) Years.

SELLER's price shall be adjusted as specified in the table below on each anniversary of the Commercial Operation Date for the term of the contract.

TABLE 1.1 EXPECTED POWER PRODUCTION & PURCHASE

Year	Cap Esc. Rate	Per kWh Rate	Expected Production	80% of Expected Production = Guaranteed Minimum Production	Total Expected Cost	80% of Expected Cost
[n]	[e]	[\$] [R _n]	(kWh) [E]	(kWh) [R _{80%}]	(\$) [P]	(\$) [P _{80%}]
1		0.0950	4,714,745	3,771,796	\$ 447,901	\$ 358,320.80
2	1.5%	0.0964	4,702,958	3,762,366	\$ 453,483	\$ 362,786.40
3	1.5%	0.0979	4,691,201	3,752,962	\$ 459,134	\$ 367,307.20
4	1.5%	0.0993	4,679,473	3,743,578	\$ 464,856	\$ 371,884.80
5	1.5%	0.1008	4,667,774	3,734,219	\$ 470,650	\$ 376,520.00
6	1.5%	0.1023	4,656,105	3,724,884	\$ 476,515	\$ 381,212.00
7	1.5%	0.1039	4,644,465	3,715,572	\$ 482,454	\$ 385,963.20
8	1.5%	0.1054	4,632,854	3,706,283	\$ 488,466	\$ 390,772.80
9	1.5%	0.1070	4,621,271	3,697,017	\$ 494,554	\$ 395,643.20
10	1.5%	0.1086	4,609,718	3,687,774	\$ 500,717	\$ 400,573.60
11	1.5%	0.1103	4,598,194	3,678,555	\$ 506,957	\$ 405,565.60

12	1.5%	0.1119	4,586,194	3,669,358	\$ 513,275	\$ 410,620.00
13	1.5%	0.1136	4,575,232	3,660,186	\$ 519,672	\$ 415,737.60
14	1.5%	0.1153	4,563,794	3,651,035	\$ 526,148	\$ 420,918.40
15	1.5%	0.1170	4,552,384	3,641,907	\$ 532,705	\$ 426,164.00
16	1.5%	0.1188	4,541,003	3,632,802	\$ 539,344	\$ 431,475.20
17	1.5%	0.1206	4,529,651	3,623,721	\$ 546,066	\$ 436,475.20
18	1.5%	0.1224	4,518,327	3,614,662	\$ 552,871	\$ 442,296.80
19	1.5%	0.1242	4,507,031	3,605,625	\$ 559,761	\$ 447,808.80
20	1.5%	0.1261	4,495,763	3,596,610	\$ 566,737	\$ 453,389.60

The first year will be based on 12 full months from Commercial Operation Date

2 Expected Electricity Purchased by BUYER for First & Subsequent Operational Years

For the first Operational Year the Expected Production is:

Electricity: 4,714,745 Total kWh

Annual Degradation Factor: 0.25% per Operational Year

For subsequent years the Expected Production shall be revised every year on the anniversary of the Commercial Operation Date by the annual degradation factor specified above. The Guaranteed Minimum Production shall be calculated as 80% of the Expected Usage per Section 5 of this PPA and as tabulated below. SELLER has the right to sell to BUYER up to 20% more Electricity than is the Expected Production stated herein.

Project Electricity Output

Year	Expected Purchase in kWh	Guaranteed Minimum Production in kWh
1	4,714,745	3,771,796
2	4,702,958	3,762,366
3	4,691,201	3,752,962
4	4,679,473	3,743,578
5	4,667,774	3,734,219
6	4,656,105	3,724,884
7	4,644,465	3,715,572
8	4,632,854	3,706,283
9	4,621,271	3,697,017
10	4,609,718	3,687,774
11	4,598,194	3,678,555
12	4,586,194	3,669,358
13	4,575,232	3,660,186
14	4,563,794	3,651,035
15	4,552,384	3,641,907
16	4,541,003	3,632,802
17	4,529,651	3,623,721
18	4,518,327	3,614,662
19	4,507,031	3,605,625
20	4,495,763	3,596,610

First year will be based on 12 full months from Commercial Operation Date

3 Electricity Purchase and Sales.

a. General Provisions:

SELLER will generate, deliver and sell Electricity, when available from the System, to the BUYER at the Electrical Interconnection Point during the term of this PPA.

SELLER agrees to generate, deliver and sell a quantity of Electricity as noted in Exhibit 1 Section 2 (above) and as guaranteed in PPA Section 5 to the BUYER from the System and BUYER agrees to purchase Electricity as measured at the Electrical Interconnection Point.

b. Formulas for Pricing:

SELLER shall prepare invoices in accordance with the formulas set forth in Exhibit 2 in the format set forth in Exhibit 3. SELLER shall render to BUYER an invoice each month for the preceding billing period during the Term of this PPA setting forth the actual amount of kWh delivered (“**Expected Production**”) and the amounts due SELLER for Electricity generated and delivered by the System. BUYER will remit full payment with each invoice to SELLER, subject to any offsets for Guaranteed Minimum Production shortfalls, due under PPA.

4 Billing Disputes

In the event BUYER disputes all or any part of any bill submitted by SELLER under this PPA, BUYER shall pay the undisputed portion of the invoice when due and shall notify SELLER in writing within fifteen (15) days from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly, and upon determination of the correct billing amount, BUYER shall promptly pay or be paid the remaining portion or refund due (if any), with interest at the Interest Rate from the date payment was due until paid (in the case of an underpayment) or from the date paid until refunded (in the case of an overpayment). Late payment fees shall not be applied to amounts that are subject to a good faith dispute until the dispute is resolved and interest is calculated in accordance with this Section. In the event that disputed amounts cannot be resolved through the process of conference, disputes shall be addressed through the process provided in Section 10.6 of the PPA.

SELLER shall submit invoices to BUYER at the address as set forth below. SELLER shall also submit a duplicate invoice (copy only) to BUYER at the address as noted on the subsequent page.

5 Renewable Energy Credits

SELLER is to be the recipient and owner of all Renewable Energy Credits, and as such can market, sell, or trade them at SELLER's sole discretion. Each and any successor to the SELLER shall be the recipient and owner of all Renewable Energy Credits accrued starting after the official closing date of the transaction, on the date which the successor takes physical possession of the system, until the end of that entity's ownership of the system (whichever comes first).

6 **Payment Address Notice**

BUYER shall submit all payments under this PPA to SELLER's project representative at the address listed in PPA Section 9. Parties agree that if BUYER receives notification to change the SELLER'S designated address for purposes of payment BUYER will notify the project representative at the address listed in PPA Section 9 at least sixty (60) days prior to the first submittal of payment to the new address. Parties also agree that BUYER will submit payments under this PPA by electronic funds transfer when electronic transfer becomes a readily available payment method for the BUYER.

7 **Failure to Achieve Guaranteed Minimum Production Penalty**

Upon Failure to Achieve Guaranteed Minimum Production, measured on a biennial basis, a payment will be made from SELLER to BUYER in the sum of \$0.02 per kWh on a basis of the following calculation:

$$P = R(MO-AO)$$

Where: P = Payment R = Rate (\$0.02 per kWh)

MO = Guaranteed Minimum Production for the time period in kWh (Exhibit 1 Section 2 see table)

AO = Actual output for the time period in kWh

EXHIBIT 2

BILLING FORMULAS AND EXAMPLES

SELLER shall provide invoices as indicated in this Exhibit and shall indicate the source and calculation of each variable set forth below in a manner so that the BUYER can readily confirm the accuracy and appropriateness of each invoice. An example of a monthly invoice is attached as Exhibit 3 to this PPA.

The total invoice for Electricity delivered by SELLER for the month in question shall be determined as follows:

$$P = E * R_n,$$

Where:

P = Monthly payment made to SELLER for electricity delivered during the billing period.

E = Electricity delivered, as shown on meter, during the billing period

R_n = is the contract price for the monthly billing period in \$/kWh as set forth in Exhibit 1.

EXHIBIT 3

SAMPLE ENERGY INVOICE

Facility Name: _____

Facility Contact Person: _____

Facility Address: _____

Account # : _____

Meter #: _____

Start Date	End Date	Start Meter Read	End Meter Read	Total kWh
Mo/day/year	Mo/day/year			

Contract Price: Fixed price for power in Exhibit 1. Total Cost of Power Delivered will be determined by the fixed pricing schedule as specified multiplied by the kilowatt hours used: SELLER shall receive all revenue from excess power produced at the rate provided by the Utility. This revenue shall be passed directly through to SELLER when received by BUYER from PG&E. If the compensation is in a form of a credit to BUYER then that credit shall be paid to SELLER by BUYER. All CSI and tax incentives or rebates shall belong to the SELLER as compensation for the construction of the facility.

CHARGES:

kWh of Energy Used: 0.00

Fixed Price per kWh for Time Frame: \$ 0.00

Amount Due: \$ 0.00

Other Fee's \$ 0.00

Total Amount Due: \$ 0.00

**Please make payment to: American Solar Utility LLC
1470 Civic Court, Suite 309
Concord, CA 94520**

EXHIBIT 4

EARLY TERMINATION FEE CALCULATION

In the event of a termination of this PPA pursuant to Sections 10.3.5.1 and 10.3.5.2, 12, and/or 13.1, other than Force Majeure or default by the SELLER, BUYER shall pay to SELLER an Early Termination Payment corresponding to the year in which early termination occurs.

The Early Termination Payment shall be calculated as outlined below.

The Yearly per kWh rate multiplied by the Guaranteed Minimum Production for the corresponding year multiplied then divided by 365 days to obtain a daily value then multiply that value by the remaining days in the year. Repeat the process for every year remaining on the original Term of the PPA. Sum all the yearly calculations together and obtain the total Early Termination Payment to be made to SELLER by BUYER.

Exhibit 5
Actual Yearly Savings Calculation

The Actual Yearly Savings Calculation will go as follows

P = Actual Production allocated per Meter

P_p = Actual Portion of On-Peak Production allocated per Meter

P_{mp} = Actual Portion of Mid-Peak Production allocated per Meter

P_{op} = Actual Portion of Off-Peak Production allocated per Meter

S_R = Seller's Rate

R = Utility Rate

R_p = Utility On-Peak Rate for the Season and Rate schedule associated with the Meter Calculated

R_{mp} = Utility Mid-Peak Rate for the Season and Rate Schedule associated with the Meter Calculated

R_{op} = Utility Off-Peak Rate for the Season and Rate Schedule associated with the Meter Calculated

K = Actual Kilowatts in Facilities Related Demand allocated per Meter

K_p = Actual Kilowatts in On-Peak Demand allocated per Meter

K_{mp} = Actual Kilowatts in Mid-Peak Demand allocated per Meter

K_{op} = Actual Kilowatts in Off-Peak Demand allocated per Meter

Y_K = 2013 Facilities Related Demand for the same Billing Period allocated per Meter

Y_p = 2013 On-Peak Demand for the same Billing Period allocated per Meter

Y_{mp} = 2013 Mid-Peak Demand for the same Billing Period allocated per Meter

Y_{op} = 2013 Off-Peak Demand for the same Billing Period allocated per Meter

D = Facilities Related Demand Cost for the Season and Rate schedule associated with the Meter Calculated

T_p = Time Related On-Peak Demand Cost for the Season and Rate schedule associated with the Meter Calculated

T_{mp} = Time Related Mid-Peak Demand Cost for the Season and Rate schedule associated with the Meter Calculated

T_{op} = Time Related Off-Peak Demand Cost for the Season and Rate schedule associated with the Meter Calculated

I = Individual Meter Savings

I_n = Individual Meter Savings for Meter N (Meter number assignments are to be given to BUYER by SELLER, in list form, as part of the written calculation).

A = Actual Billing Period Savings

A_n = Actual Billing Period Savings for Billing Period N (Whereas the subscript number represents each individual billing period, which are assigned in chronological order, of which there are 12 in each operational year).

Before Actual Yearly Savings can be established, the savings in for every individual meter must be calculated for each billing period separately, using the rate schedule associated with that meter during the billing period (“Individual Meter Savings”). After the savings for each individual meter is established, that information can then be summated into the actual savings for each billing period (“Actual Billing Period Savings”).

$$\text{Individual Meter Savings} = ((P_p * R_p) - (P_p * S_R)) + ((P_{mp} * R_{mp}) - (P_{mp} * S_R)) + ((P_{op} * R_{op}) - (P_{op} * S_R)) + (((K * D) - (Y_K * D)) + ((K_p * T_p) - (Y_p * T_p)) + ((K_{mp} * T_{mp}) - (Y_{mp} * T_{mp})) + ((K_{op} * T_{op}) - (Y_{op} * T_{op})))$$

Whereas [(((K * D) - (Y_K * D)) + ((K_p * T_p) - (Y_p * T_p)) + ((K_{mp} * T_{mp}) - (Y_{mp} * T_{mp})) + ((K_{op} * T_{op}) - (Y_{op} * T_{op}))) must be greater than or equal to zero.

If [(((K * D) - (Y_K * D)) + ((K_p * T_p) - (Y_p * T_p)) + ((K_{mp} * T_{mp}) - (Y_{mp} * T_{mp})) + ((K_{op} * T_{op}) - (Y_{op} * T_{op}))) is less than zero then this section of the Actual Yearly Savings calculation must be removed from the calculation, as the implementation of the System will not increase demand charges.

$$\text{Actual Billing Period Savings} = \sum_{1}^N (I_1 + I_2 + I_3 + I_4 \dots I_n)$$

Whereas N = the total number of meters under the Net Metering Interconnection Agreement/s.

The summation of each calculation of Actual Billing Period Savings for the year being calculated will be known as “Actual Yearly Savings”. This is represented by the following equation:

$$\text{Actual Yearly Savings} = (A_1 + A_2 + A_3 + A_4 + A_5 + A_6 + A_7 + A_8 + A_9 + A_{10} + A_{11} + A_{12})$$

SELLER reserves the right to change or amend the calculation of Actual Yearly Savings presented in this Exhibit 5, for cause of; error or omission in this Exhibit, **Force Majeure** Event, Change in Law, Change in the Net Metering Interconnection Agreement signed with the Utility, Change in implementation of NEM Interconnection Agreement, or Change in any Tariff associated with BUYER electrical systems.

Changes to these calculations are to be delivered to BUYER with an explanation of the changes in the calculation, in written form and implemented dependent on reasonable acceptance by BUYER, which must not be unreasonably withheld.