



Meeting Date: December 2, 2015

Staff Contact: John M. Stomp III, P.E., Chief Operating Officer

TITLE: C-15-37 – Approving a Contract with Affordable Solar Installation, Inc. to Finance, Construct, Own, Operate and Sell Electricity to the Water Authority from a Solar Energy Facility at the San Juan Chama Drinking Water Treatment Plant

ACTION: Recommend Approval

SUMMARY:

The Water Authority is requesting approval from the Board to negotiate and contract with Affordable Solar Installation, Inc. (Affordable) to finance, construct, own, operate and sell electricity to the Water Authority from a solar energy facility (SEF) at the San Juan-Chama Drinking Water Treatment Plant (WTP).

If approved by the Board, a Power Purchase Agreement (PPA) will be executed by the Water Authority and Affordable to enable Affordable to finance and build a SEF at the WTP in 2015/16. Affordable will provide the capital to build the SEF, operate and maintain the plant over a 25-year term. The agreement is structured to allow the Water Authority the option to purchase the facility throughout the term of the agreement. At the end of the 25-year term the Water Authority will have the option to purchase the system at market value, or Affordable will remove the system at no cost to the Water Authority.

The Water Authority will purchase all of the electricity from the SEF at a rate of \$0.0775 per kWh. The Water Authority's energy rate from the SEF will escalate at a rate of 1.5% per year over the 25-year term. The Water Authority's current blended PNM rate at the WTP is \$0.1420 per kWh and conservatively projected to increase at an annual rate of 2%. The solar plant is projected to save the Water Authority \$8,200,000 over the 25-year term (see the annual savings analysis attached). During the first 12 months of operation the plant is estimated to produce 4.1MWh's, which is approximately 10% of the current 44.7MWh WTP load. In addition, Affordable will provide the Water Authority real-time, online access to solar production, energy load, and energy savings data.

PNM has conditionally awarded the Water Authority an 8-year renewable energy credit incentive of \$0.02 per kWh for the Affordable project. This incentive is in addition to the \$8,200,000 savings from the SEF and equates to \$427,000 in savings over the 8 year period that the credits will be available. PNM will pay the Authority directly for this production incentive.

Board approval of this contract authorizes the Executive Director to negotiate and enter into contract with Affordable Solar Installation, Inc. This agreement is based on an existing government contract with the City of Truth or Consequences. A similar agreement was entered into to provide solar power to the Reclamation Plant approximately two-years ago with Sun Edison.

CONCLUSION:

By entering into this agreement the Water Authority can be assured of a stable energy rate at the WTP for approximately 10% of the electricity used at the WTP for a 25-year period. Since electric usage is a major expense for the Water Authority, insuring a stable rate will enable the Water Authority to more effectively plan for the future.

The installation of this system will require a 10-acre site located on the east side of the facility and easement access to Affordable.

FISCAL IMPACT:

There is no cost to the Water Authority associated with this contract. However, the Water Authority will provide the 10-acre site for the construction and operation of the facility over the 25-year period. All construction, annual operation and maintenance costs will be borne by Affordable. The Water Authority agrees to purchase the electricity produced by Affordable for the contract's 25-year term. The agreement allows the Water Authority the option to purchase this system at any point in the 25-year period. If the option to purchase the facility is executed, the system purchase would come to the Board for approval.

An independent financial analysis was completed by RBC Capital Markets to verify the savings.

Year	Net Energy Cost Savings (\$/Yr) (Expected)
1	\$262,283
2	\$267,220
3	\$272,234
4	\$277,324
5	\$282,493
6	\$287,740
7	\$293,068
8	\$298,477
9	\$303,969
10	\$309,544
11	\$315,205
12	\$320,951
13	\$326,784
14	\$332,706
15	\$338,718
16	\$344,821
17	\$351,016
18	\$357,304
19	\$363,688
20	\$370,167
21	\$376,745
22	\$383,421
23	\$390,197
24	\$397,075
25	\$404,057
Total =	\$8,227,207



TO: MARK SANCHEZ, EXECUTIVE DIRECTOR
FROM: PAUL CASSIDY AND ERIK HARRIGAN
SUBJECT: SOLAR FACILITY AT WATER TREATMENT PLANT
DATE: OCTOBER 5, 2015
CC: STAN ALLRED, CHIEF FINANCIAL OFFICER

Per the Authority's request we have reviewed the Solar Feasibility & Analysis provided by Triple H Solar LLC dated August 27, 2015. Our scope of review encompassed the numerical analysis and assumptions provided by Triple H Solar and the numerical conclusion presented. Additionally, we evaluated the "Ownership Price" based upon the Authority's ability to borrow the funds to purchase the equipment. We have not, however, evaluated the accuracy of the cost of grid energy nor confirmed the cost of PPA energy.

BASE ASSUMPTIONS:

In the memo provided by Triple H Solar LLC, the Authority's anticipated cost of purchased grid power is \$0.1396 per kWh. The proposed solar system size for this project is 1889 kW DC and is expected to generate, when first installed and assuming no degradation in the first year, 4,250,905 kWh of energy. This amount of energy would be replacing annual purchased grid power costs of \$593,426 ($\$0.1396 * 4,250,905$) in the first year. The annual degradation rate of the solar equipment is expected to be 0.70% or 15.51% over the 25 year life of the feasibility analysis. Our understanding is that this is typical for current solar power equipment and that a degradation rate of no more than 25% over the life of the system is often guaranteed by the manufacturer of the equipment. RBCCM has not verified that this is accurate.

The Feasibility and Analysis report provided by Triple H Solar has assumed a 3% escalation factor in the cost of grip power. This future escalation rate may be conservative; however, we have not performed a historical analysis on grid energy rates. In the event grid power escalation costs exceed 3%, the projected savings to the Authority will be greater. Conversely should grid power escalation costs increase at a rate below 3%, the projected savings to the Authority will be lower.

Triple H Solar has also provided, in addition to the cash flow savings analysis, a net present value ("NPV") savings analysis. RBCCM agrees that this is a prudent method in evaluating the savings to the Authority. The discount rate used for the net present value saving analysis is 5%. RBCCM typically evaluates NPV savings based upon the average borrowing cost for an entity. In this case the Authority's average borrowing cost, based upon current market conditions, for a 25 year level payment debt issuance would be around 3.56%. This is 144 bps below the discount rate used by Triple H Solar. It is projected that over time the Authority will generate higher annual cash flow savings using the solar option vs. grid power. The higher the discount rate the lower the NPV savings to the Authority and therefore using a higher rate results in a more conservative result. Because of this, the higher discount rate used of 5% seems reasonable.

AUTHORITY OWNED EQUIPMENT:

Typically the greatest cost benefit for solar is through ownership of the actual installed equipment. Our understanding is the cost to purchase and install the proposed solar equipment is \$3,589,100. Based upon current interest rates, if the Authority financed the acquisition of solar equipment the annual debt service (assuming a 25 year borrowing) would be \$223,569 with an average borrowing rate of 3.56%. Since the Authority would own the equipment, the operation and maintenance of the facility would fall on the Authority, which would cost approximately \$23,000 to \$24,000 per year, based upon the information provided by Triple H. Solar. The O&M costs are escalated at 2% as also provided by Triple H. Solar. A



benefit of owning the solar equipment would be the Authority's ability to receive renewable energy credits or RECs, which have value on the open market, which the Authority could sell. The estimated RECs revenues as provided in the feasibility report are approximately \$85,000 and decline in conjunction with the degradation of the solar equipment. Over the 8 year life of the RECs the Authority would receive an aggregate of \$663,713 or \$537,117 on NPV basis. When factoring in the annual cost of a debt borrowing, the O&M and the benefit of the RECs the total cash savings to the Authority is \$13,939,428 as compared to grid energy or \$7,453,624 on a NPV basis.

If the Authority purchased its own solar array and related equipment, our understanding is the Authority would have to go through a RFP process. That process can be lengthy and time consuming. A consideration as mentioned in the Triple H Solar analysis is the potential cost of a solar array interconnection fee, which has been proposed by PNM but is currently not in place. Based upon what is being proposed by PNM, the interconnection fee could run as much as \$2.7 million over the life of the study or \$108,000 per year. When factoring in the potential interconnection fee into the savings above, the total cash flow savings are reduced to \$11,239,428, which is \$5,931,478 on a NPV basis.

POWER PURCHASE AGREEMENT ANALYSIS:

The Authority also has the option of leveraging an existing Power Purchase Agreements (PPA). Triple H Solar has identified an existing New Mexico PPA that Truth or Consequences ("T or C") has negotiated and that the Water Authority could consider leveraging. The benefit of leveraging an existing PPA is several fold; The Authority does not have to incur the cost of a connection fee, the cost of maintenance and upkeep on the solar equipment and the risk of new advancements in solar equipment making them more efficient (which is a very distinct possibility given the advances in solar technology in the past 10 years). Under the existing T or C PPA the cost of power is \$0.0790 per kWh, which compared to grid power is a savings of \$257,605 in the first year. The escalation cost of the PPA is only 1.5% compared to the 3% provided in the grid power escalation cost. Therefore, the annual savings increases annually. By the end of the study period, the annual savings is over \$600,000, or \$181,000 on a present value basis assuming a 5% discount rate. In total the cash flow savings realized by the power purchase contract is \$10,458,626, which is \$5,387,561 on a NPV basis.

CONCLUSION:

Based upon the information provided in the analysis by Triple H Solar and given current market conditions we believe the discount factor is conservative and therefore should result in higher actual present value savings to the Authority than purchased grid power. As mentioned above, while RBCCM believes that the energy escalation factors are conservative, RBCCM has not nor intends to verify such factors. Should it be of concern to the Authority, the Authority may want to verify with a third party the projected escalation rates. Owning and operating its own solar array would result in the greatest savings to the Authority with total cash flow savings of \$11,239,428, which is \$5,931,478 on a NPV basis, which assumes the potential interconnection fees mentioned above. Entering into a PPA will provide estimated cash flow savings of \$10,458,626 or present value savings of \$5,387,561. When compared to an Authority owned facility, the PPA will cost the Authority \$780,802 or \$543,917 on a present value basis. On an average annual basis the savings are only about \$31,232.

The analysis is based solely upon the financial comparison and does not consider the non-financial impacts such as the RFP process, unanticipated costs of owning your own system or the higher than projected O&M costs. RBCCM does however, conclude based upon the information provided that a entering into a PPA will save the Authority energy costs at the water treatment plant and reduce overall operating costs.

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “**PPA**” or “**Agreement**”) is made and entered into as of November ____, 2015 (the “**Effective Date**”), by and between Affordable Solar Installation, Inc, a New Mexico Corporation, with its principal place of business at 4840 Pan American Freeway NE, Albuquerque, NM 87109 (“**Owner**”), and the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico with its principal place of business at 1 Civic Plaza NW Room 5012 Albuquerque, NM 87102 (“**Host Customer**”). Owner and Host Customer are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. Owner has experience in building, financing, owning and operating solar energy facilities.

B. Owner intends to build, finance, own and operate a solar energy facility (the “**SEF**”) as more particularly described in Exhibits A-1 & A-2, which SEF is located on the Property described in Exhibit B hereto. Unless separated for clarity, the term “SEF” will refer to the combined values or attributes of both systems described in Exhibits A-1 & A-2.

C. Owner desires to sell to Host Customer, and Host Customer desires to purchase from Owner, all of the Energy Output, subject to the Terms and conditions hereunder, delivered to Host Customer at the Delivery Point during the Term and otherwise in accordance with the terms of this PPA.

D. Host Customer has determined that: (1) the amount it would otherwise spend on energy is not likely to exceed the cumulative amount of utility cost savings measured over twenty-five years or over a period not to exceed the expected useful life of the SEF; and (2) Owner has provided a written guarantee that the utility cost savings will meet or exceed the costs of the SEF.

AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this PPA and the Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Host Customer agree as follows:

ARTICLE 1.

DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in Exhibit C, the *Schedule of Definitions and Rules of Interpretation*, attached hereto and made a part of this PPA by this reference, or elsewhere in this PPA.

1.2 Rules of Interpretation. The rules of interpretation in Exhibit C, shall apply to this PPA unless expressly provided otherwise.

1.3 Not a Public Work. It is agreed and understood between the Parties that the installation, operations, sale, and/or purchase of electricity under this PPA *is not*, nor in any way should be construed as a public works project, as such term is commonly used in conjunction with municipal or other governmental projects.

ARTICLE 2.

TERM AND TERMINATION

2.1 Term.

(a) The initial term of this PPA (the “**Initial Term**”) with respect to each Array shall commence on the Effective Date and shall be in effect until 11:59 p.m. local time in Albuquerque, New Mexico on the twenty-fifth (25th) year anniversary of the applicable Commercial Operation Date.

(b) Without constituting an Event of Default under this PPA, and without liability of either Party to the other Party (except for such amounts then due and owing under this PPA as of the date of such termination), Owner shall have the right, but not the obligation, to terminate this PPA prior to expiration of the Term upon the occurrence of the following and by notification to the Host Customer as soon as reasonably practical under the circumstances:

(i) an unstayed order of any Governmental Entity having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or services; or

(ii) elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Owner and/or its ability to perform its obligations under this PPA, unless the Parties have agreed to amend this PPA as provided in Section 8.6 below.

2.2 For the avoidance of doubt, notwithstanding any other provision herein, should termination of the PPA result from either 2.1(b)(i) or (ii) above, the Host Customer will not owe a Host Customer Termination Payment to the Owner, nor will the Owner owe an Owner Termination Payment to the Host Customer.

2.3 Removal of Arrays. Except as otherwise provided herein or in a lease relating to an Array (a “Lease”), Owner shall, within one hundred fifty (150) days following the end of the Term, or any termination of this PPA, at Owner’s sole cost and expense, fully remove the Arrays from the Property and fully restore the Property to its original condition, normal wear and tear excluded. Owner and its agents, consultants and representatives shall have access at all reasonable times to the Property and the SEF Assets for purposes of such removal. An Array shall be considered abandoned if not removed in accordance with this Section 2.3.

2.4 Notice of Commercial Operation. Subject to the remaining provisions of this PPA, Owner shall notify Host Customer in writing when each Array has achieved Commercial Operation (each, a “**Notice of Commercial Operation**”), and shall in such notice state the applicable Commercial Operation Date. Unless waived by Host Customer, Owner shall cause such Commercial Operation Date to occur no later than ten (10) months following completion of Utility’s system interconnection study or the signing of this PPA, whichever comes later.

2.5 Host Customer Optional Termination Payment; Notice. Without constituting an Event of Default under this PPA, and without liability of either Party to the other Party (except for such amounts then due and owing under this PPA as of the date of such termination), Host Customer may elect to terminate this PPA prior to its expiration by paying a Host Customer Optional Termination Payment in the amount set forth in the Host Customer Optional Termination Payment Schedule attached as Exhibit D. As soon as practicable after calculation of the Host Customer Optional Termination Payment by Owner, including proration with respect to Net Operating Income (“NOI”) as described in Exhibit D, Owner will notify Host Customer of the amount of the Host Customer Optional Termination Payment and any amount otherwise due and outstanding under this PPA with respect to the Arrays. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Upon payment of the Host Customer Optional Termination Payment in full and any amount otherwise due and outstanding under this PPA by Host Customer with respect to the Arrays, this PPA shall terminate, and Owner shall remove the Arrays as provided in Section 2.3. Prior to payment in full of the Host Customer Optional Termination Payment, this PPA shall remain in full force and effect. The Host Customer Optional Termination Payment Schedule shall not be construed as evidence of fair market value for purposes of Host Customer purchase under Sections 13.4 through 13.7.

ARTICLE 3. TERMS AND CONDITIONS

3.1 Conditions Precedent. The respective rights and obligations of the Parties under this PPA (other than those contained in this Article 3, Article 11 (Representations and Warranties; Host Customer Findings and

Acknowledgement), Article 12 (Indemnity; Limitations), Article 14 (Confidentiality; Publicity), Article 15 (Dispute Resolution), Article 16 (Notices), Article 17 (Assignment; Financing) and Article 18 (Miscellaneous), which are binding upon the Parties as of the Effective Date) are conditioned upon the satisfaction in full or waiver by the applicable Party of the following:

(a) Owner shall have received or shall have obtained from Owner's Financing Parties all commitments and contractual rights to receive all equity, debt, tax equity and other financing, in such forms and from such parties as is reasonably satisfactory to Owner and as Owner reasonably determines necessary to develop, construct, operate and maintain the SEF over the Term, and all conditions precedent to the effectiveness of any and all such financings and the drawdown of funds thereunder shall have been satisfied or waived to Owner's satisfaction.

(b) Owner shall have received and accepted the audited Financial Statements of Host Customer for the most recent Three (3) years prior to the effective date of this PPA.

(c) Host Customer shall have received and accepted certificates of Owner's good standing and authority to do business in the State of New Mexico prior to the effective date of this PPA.

(d) Owner shall have obtained all consents, permits, approvals, authorizations, qualifications and orders of all Governmental Entities required by Law in connection with this PPA and the transactions contemplated hereby (collectively, "**Governmental Approvals**") and submitted copies of same to Host Customer, or the applicable Government Entities shall have waived the requirement for such Governmental Approval(s) prior to construction start.

(e) Owner shall have entered into and/or submitted to Host Customer for execution all contracts (including interconnection and net metering agreements) and delivered all other documents required by the Utility in connection with this PPA and the transactions contemplated hereby (collectively, "**Utility Documents**") to the reasonable satisfaction of the Parties, or the Utility shall have waived the requirement for such Utility Documents.

(f) The Parties (or Owner and the applicable lessor or seller, as the case may be) shall have duly executed and delivered a lease for any leased premises.

3.2 Applicability of Conditions Precedent. If the conditions described in Section 3.1 have not been satisfied or waived by the applicable Party and, as applicable, Owner's Financing Parties on or before the start of construction, this PPA will immediately terminate, and the Parties will have no further obligations or liabilities other than those expressly stated to survive this PPA.

3.3 Host Customer Terms and Conditions.

(a) **Insurance Specifications:** See Article 8, Section 8.3, and Exhibit E

(b) **Local Employment Preference:** Owner will cause the contractor performing the Engineering, Procurement, and Construction of the SEF (the "EPC") to make best efforts to employ the local labor force (which may include "resident businesses" and "resident manufacturers" as defined in Section 13-1-22, NMSA 1978) in the construction of the Arrays, including site preparation, grading and system installation where commercially feasible, as determined by Owner.

(c) **Wage Rates.** If applicable, Owner shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor and Industrial Division, and with all other applicable requirements of that Division, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

(d) **Examination of Sites.**

(i) The Owner shall have visited the site and shall have fully acquainted and familiarized themselves with the conditions as they exist and the operations to be carried out. The Owner shall make such investigations as they may see fit so that they may fully understand the facilities, difficulties and restrictions attending the execution of the work.

(ii) The failure or omission of the Owner to examine any instruction or document, or any

part of the specification or to visit the site and acquaint themselves as to the nature and location of the work, the general and local conditions and all matters which may in any way affect performance shall not relieve the Owner of any obligation to perform as specified herein. Owner understands the intent and purpose thereof and its obligations hereunder and that they will not make any claim for, or have any right to damages resulting from any misunderstanding or misinterpretation of this Agreement, or because of lack of information.

(e) Permits, Licenses and Notices.

(i) Owner shall make application for and obtain necessary permits and licenses from State of New Mexico, or the appropriate permitting authority having jurisdiction.

(ii) Owner shall maintain a business registration with the Host Customer for the term of this Agreement, which requirements and/or any related fees shall not exceed those for other similarly situated Host Customer vendors.

(f) Project Reporting. Owner shall provide on-line access to information related to performance and billing, e.g., monthly meter readings and outage data. The website will also include a running service log for each Array that will include information about identified issues and how such issues are being resolved.

(g) Change in Owner Representatives. The Host Customer reserves the right to request/require a change in Owner representatives (Owner principal points of contact) if the assigned representatives are not, in the opinion of the Host Customer, meeting its needs adequately.

(h) Notice: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

(i) Independent Contractor: Neither the Owner nor its employees are considered to be employees of the Host Customer for any purpose whatsoever. The Owner is considered an independent contractor at all times in the performance of the PPA services described herein. The Owner further understands that it is not entitled to any benefits from the Host Customer under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Host Customer as described in its Employee Personnel Manual.

(j) Discrimination Prohibited: In performing the services required hereunder, the Owner shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability. Owner will agree to comply with the Presidents Executive Order No. 11246 as amended.

(k) ADA Requirement: In performing the services required hereunder, if required, the Owner agrees to meet all the requirements of the Americans with Disabilities Act, (the "ADA"), which are imposed directly on the Owner or which would be imposed on the Host Customer as a public entity. The Owner agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the Host Customer, its officials, agents and employees from and against any claims, actions, suits or proceedings of any kind brought against the Owner as a result of any act or omissions of the Owner or its agents in violation.

(l) Reports and Information: In conjunction with Section 10.4, at such times and in such forms as the Host Customer may reasonably require, Owner shall furnish to the Host Customer such statements, records, reports, data and information relating to local hire, compliance with federal and state law, and/or notifications of litigation pertaining to the construction and/or operation of the SEF. In providing documentation pursuant to this provision, Owner shall clearly designate any information that it deems proprietary and not subject to disclosure under the New Mexico Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. Any records which are considered to be "public records" in the possession of the Host Customer under the New Mexico Inspection of Public Records Act shall be disclosed upon lawful request notwithstanding any provision to the contrary found in this Agreement.

(m) Conflict of Interest: The Owner warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required by this Agreement. The Owner shall comply with any applicable provisions of the New Mexico

Governmental Conduct Act and the New Mexico Financial Disclosures Act. Owner also agrees that it shall not represent any person, company or otherwise that would create a conflict of interest for the Term of this Agreement.

(n) Applicable Laws: All applicable federal laws, state laws, municipal ordinances, and the rules and regulations, as may be amended from time to time, including those requirements relating to health, safety and the environment, of all authorities having jurisdiction over said item, shall apply to this Agreement throughout. They will be deemed to be included in the contract the same as though herein written out in full.

(o) Taxes. The Energy Payment Rate as reflected on Exhibit F does not include taxes, if any, which may be applicable to the purchase and sale of Energy as contemplated in Section 4.6.

(p) Non-Collusion. In signing this PPA, Owner certifies it has not, either directly or indirectly, entered into action in restraint of full competition in connection with this PPA.

3.4 Survival. Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment and performance obligations, arising under this PPA prior to termination of this PPA and (b) as provided in Sections 9.3 through 9.7, Section 10.3, Articles 12, 13 (as necessary to give effect to its terms), 14, 15 and 18.

ARTICLE 4. PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale of Energy Output.

(a) Commencing on the first Commercial Operation Date and continuing throughout the remainder of the Term, Owner shall make available to Host Customer, and Host Customer shall take delivery of, at the Delivery Point, all of the Energy Output produced by the SEF.

(b) Host Customer shall be responsible for arranging delivery of Energy Output from the Delivery Point to Host Customer's installations and/or equipment on Host Customer's side of the Delivery Point necessary for acceptance and use of the Energy Output. The Parties acknowledge that (1) the Energy Output from the SEF is an intermittent, as available energy product, (2) Owner guarantees a level of Energy Output in accordance with the Production Guarantee in Exhibit G, and (3) except as provided in the Written Savings Guarantee of Section 4.4 below and in Exhibit G, Host Customer is solely responsible for meeting any and all of its energy needs not met from SEF generated-energy at Host Customer's cost and expense.

4.2 Price for Energy Output. Host Customer shall pay Owner for the Energy Output, as metered at the Metering Device, at the applicable Energy Payment Rate in accordance with Exhibit F hereto. The payment to be made by Host Customer to Owner shall equal the Energy Output for the relevant period multiplied by the Energy Payment Rate for such period.

4.3 Energy Payment Rate.

(a) Initial Term. The Energy Payment Rate for the first Contract Year of the Initial Term shall be as stated in Exhibit F hereto. On the first anniversary of the first Commercial Operation Date and each anniversary of such Commercial Operation Date thereafter during the Initial Term, the Energy Payment Rate shall be increased by the Energy Payment Rate Increase Factor applicable to the Initial Term stated in Exhibit F hereto.

(b) Extension Terms. The Energy Payment Rate during the first Contract Year of each Extension Term shall be as mutually agreed between the Parties.

(c) Adjustments to Energy Payment Rate. In all cases, any adjustments in the Energy Payment Rate shall be made to the nearest hundredth of a cent.

4.4 Guaranteed Savings. Owner shall:

(a) guaranty annual energy savings as provided in the Form of Written Guarantee attached to this PPA as Exhibit H;

(b) provide a performance guarantee in the amount of \$50,000 in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to Host Customer and its approving agency; and

(c) The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the Owner, a qualified provider within the meaning of Section 6-23-2((E) NMSA 1978 in this PPA, which is a guaranteed utility savings contract within the meaning of 6-23-2(D) NMSA 1978.

4.5 Title and Risk of Loss of Energy Output. Title to and risk of loss of the Energy Output will pass from Owner to Host Customer at the Delivery Point. Owner warrants that it will deliver the Energy Output to Host Customer at the Delivery Point free and clear of all liens, security interests, claims and other encumbrances.

4.6 Governmental Charges.

(a) Owner is responsible for paying income taxes attributable to Owner for income received under this PPA.

(b) Host Customer is responsible for all Governmental Charges attributable to the sale of the Energy Output from Owner to Host Customer customarily charged by the electric utility serving Host Customer (including but not limited to the gross receipt taxes if applicable) or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of the Energy Output to Host Customer at the Delivery Point. Host Customer shall promptly reimburse Owner for any such Governmental Charges that are assessed to and paid by Owner.

(c) Both Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Output hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefrom, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Utility Rates/Tariffs. In conjunction with 4.1(b)(3) above, Host Customer understands and acknowledges that Owner is not replacing 100% of its energy needs and that Host Customer will still need to purchase some energy from the Utility. The Host Customer is relying on the Production Guarantees provided in this PPA. In conjunction with said purchase of energy from the Utility, Host Customer expressly agrees and understands that it is responsible for the applicable rates and/or tariffs charged to it by the Utility for any such energy purchased, and that any loss relating to the failure to obtain a preferential tariff rate shall be borne solely by the Host Customer.

ARTICLE 5.

ENVIRONMENTAL ATTRIBUTES; ENVIRONMENTAL INCENTIVES; REPORTING RIGHTS

5.1 Title to Environmental Attributes, Environmental Incentives and Reporting Rights. Notwithstanding the SEF's presence on the Property, Host Customer shall own, and may resell in its sole discretion, all right, title and interest associated with or resulting from the production, sale, purchase or use of the Energy Output including, without limitation (a) all Environmental Attributes and (b) the Reporting Rights.

5.2 Further Assurances. Owner shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Host Customer's right, title and interest in and to the Environmental Attributes and Reporting Rights. If the standards used to qualify the Environmental Attributes or Reporting Rights to which Host Customer is entitled under this PPA are changed or modified, Owner shall, at Host Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes or Reporting Rights to comply with new standards as changed or modified.

ARTICLE 6.

DESIGN, CONSTRUCTION, INITIAL OPERATION, MAINTENANCE AND MONITORING

6.1 Design, Construction, Maintenance and Monitoring of SEF by Owner.

(a) Owner shall, at its sole cost and expense, (i) design, specify, procure (including but not limited to all inverters, transformers, switchgear, wiring and protective devices to connect to the base electrical distribution system) and construct the SEF substantially in accordance with applicable Laws and the General SEF Description set forth for each array in Exhibit A-1 & A-2 and generally in accordance with the construction schedules set forth in Exhibit I (ii) maintain the SEF in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and the terms of this PPA, (iii) reasonably monitor the SEF's performance and provide "commercial best efforts" to repair the SEF in a reasonable time in an effort to minimize any loss of Energy Output caused by a SEF malfunction, and (iv) provide Host Customer with real-time online access to the performance data from the SEF.

(b) Owner shall, at its sole cost and expense, develop and design a grading plan, and as applicable, a drainage plan and storm water prevention plan at the Property. Such plan shall be submitted to the Host Customer for review and approval if required, which shall not be unreasonably conditioned, burdened, or withheld. Further, if after twenty (20) Business Days following submittal by Owner to Host Customer, Owner has not received any response, such plans shall be deemed approved.

(c) Prior to commencement of construction of an Array, Owner shall provide (i) to Host Customer the opportunity to participate in a formal design review with Owner, the purpose of which is to ensure that the Array has been designed in accordance with the terms of this PPA, and (ii) a detailed design package including system and product specifications and drawings and descriptions, which shall be conforming to design.

(d) The Owner's scope of work, in addition to providing a functional, interconnected solar PV facility, includes all site preparation work, fencing, implementation of effective control of dust, weeds, and erosion for the duration of the PPA. Owner will limit the use of water to amounts reasonably necessary for compaction and dust control during construction, and for maintenance of the Arrays during operation; provided, that Owner shall pay for water used during construction and operation at the rates applicable to such uses.

(e) Owner will comply with all Federal, State and local regulations regarding the transportation, storage and use of hazardous materials. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

(f) Owner hereby covenants not to commence construction of an Array without financing available and sufficient to complete construction of the Array.

6.2 Access Provisions in Lease Agreement. Owner and Host Customer shall include in the lease agreement for the Property provisions to allow Owner reasonable access to the Property through transit of Host Customer property to the adjacent Property. Owner and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times to the Property for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing the SEF, and to any documents, materials and records of Host Customer relating to the Property that Owner reasonably requests in conjunction with these activities. Owner shall comply with all reasonable access and notice procedures agreed upon between Host Customer and Owner from time to time in writing relating to activities conducted by or on behalf of Owner on the Property relating to the SEF. During any such activities, Owner, and its sub-contractors, agents, consultants and representatives, shall comply with Host Customer's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Owner), and Owner and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to minimize interference with Host Customer's nearby/adjacent activities to the extent reasonably practicable. Notwithstanding anything to the contrary in this Section 6.2, Owner shall be allowed immediate access to the Property and the SEF in connection

with any emergency condition then existing with respect to the SEF that could reasonably be expected to pose an imminent threat to the safety of persons or property.

6.3 Owner's Maintenance.

(a) Nothing in this PPA shall limit Owner's ability to maintain the Property in a reasonable manner consistent with Owner's standard practices.

(b) Notwithstanding Section 6.2 above, Host Customer acknowledges, agrees and accepts that activities conducted by or on behalf of Owner on the Property relating to the SEF may interfere with Host Customer's conduct of business thereon. Owner agrees to take all commercially reasonable measures to minimize such interference.

6.4 Host Customer Maintenance of Contiguous Property. Host Customer shall maintain any real property owned or occupied by Host Customer which abuts the Property on which any Array is located in a manner which will not disturb or interfere with the operation and maintenance of the SEF by Owner.

(a) Host Customer agrees to reasonably assist Owner (at no cost to Host Customer) in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including but not limited to the submission of applications for interconnection of the System with the local electric utility and applications for the resale of excess power to the local utility (in case of a Host Customer Event of Default or otherwise). Host Customer shall not make any material changes to its electrical equipment at the Premises after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility or the local inspector fail to approve the interconnection of the System with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit A-1 and A-2 in connection with the Premises, Owner may terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to proceed with the installation of the System if the applicable utility or inspector approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

ARTICLE 7.

METERING DEVICE AND METERING

7.1 Metering Equipment. The Parties acknowledge and agree that the Owner will engage a Third Party Production Monitoring and Reporting Service (a licensed and neutral testing agency), and that the Metering Device used will, at a minimum, be certified by a nationally recognized independent testing laboratory to ANSI C12.20-0.2% class.

7.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Energy Output. If the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurements of Energy Output shall be determined by Owner in a commercially reasonable manner by reference to quantities of Energy Output measured during periods of similar conditions when the Metering Device was registering accurately. If no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed that the period of such inaccuracy was equal to one-half of the period from the date of the last previous test of such Metering Device (or if no such test had been conducted, from the first Commercial Operation Date) through the date the inaccuracy of the Metering Device has been discovered; *provided, however*, that the period covered by the correction under Section 7.3 shall not exceed six (6) months. If, for calculation purposes, no time period of similar conditions, during which the Metering Device registered accurately can be determined, measurements of Energy Output shall be calculated in good faith by Owner with reference to applicable solar production modeling and solar insolation data generally accepted in the solar industry.

7.3 Testing and Correction.

(a) Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of the Third Party Monitoring and Reporting Service Provider, or the Metering Device's manufacturer or other certified testing authority to verify the accuracy of the measurements and recordings of the Metering Device. Either Party shall provide at least ten (10) Business Days prior written notice to the other Party of the date upon which any such test is to occur. The Party requesting the test shall prepare a written report setting forth the results of each such test, and shall provide the other Party with copies of such written report not later than twenty (20) Business Days after completion of such test. The Party requesting the test shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Owner Maintenance of Metering Device. Owner shall maintain the Metering Device in accordance with the Metering Device manufacturer's specifications and requirements, and those of applicable Governmental Authorities.

(c) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing, stating in reasonable detail the basis for such dispute.

(ii) The non-disputing Party shall, within fifteen (15) Business days of receiving such notice from the disputing Party, advise the disputing Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.

(iii) If the Parties are unable to agree to the accuracy or condition of the Metering Device, either Party may request additional testing of the Metering Device by the Third Party Monitoring and Reporting Service provider, or the Metering Device's manufacturer or other certified testing authority.

(iv) If the Metering Device is found to be inaccurate by 1% or less, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 7.3(c)(i) shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii).

(v) If the Metering Device is found to be inaccurate by more than 1% or if such Metering Device is for any reason out of service or fails to register, then (A) Owner shall promptly cause any Metering Device found to be inaccurate to be replaced or adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Energy Output delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 7.2 and (C) Owner shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii). If as a result of such adjustment the quantity of Energy Output for any period is decreased (such quantity, the "***Energy Deficiency Quantity***"), Owner shall reimburse Host Customer for the amount paid by Host Customer in consideration for the Energy Deficiency Quantity by crediting such amount against Host Customer's payment obligations under this PPA. If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "***Energy Surplus Quantity***"), Owner shall separately invoice for, and Host Customer shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year in accordance with Article 9 below.

ARTICLE 8.

SEF OWNERSHIP; RISK OF LOSS; INSURANCE; FORCE MAJEURE; CHANGE IN LAW

8.1 SEF Ownership. Owner shall be deemed the owner of the SEF for all purposes. In the event that an Array is located on land leased from Host Customer, the provisions of Section 8.1(a) shall apply.

(a) Unless and until the SEF is sold to Host Customer as contemplated in Article 13 of this PPA or is assigned as provided in Article 17 of this PPA, notwithstanding the presence and operation of the SEF on the Property, except as otherwise provided in the documents relating to any industrial revenue bonds, Owner shall at all times retain title to and be the legal and beneficial owner of the SEF and all alterations, additions or improvements made thereto by Owner, and the SEF shall remain the property of Owner or Owner's assigns. In no

event shall anyone claiming by, through or under Host Customer (including but not limited to any present or future mortgagee of the Property) have any rights in or to the SEF at any time. Host Customer acknowledges and agrees that Owner may be required to grant or cause to be granted to Owner's Financing Parties a security interest in the SEF and Host Customer expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights it may have in the SEF, from time to time, pursuant to this PPA, at law or in equity.

(b) The Parties specifically acknowledge and agree that Owner or Owner's financing parties shall be the owner of the SEF for federal income tax purposes, and in that connection, Owner and/or Owner's Financing Parties shall be entitled to all depreciation deductions associated with the SEF and to any and all tax credits or other tax benefits associated with the SEF, including any such tax credits or tax benefits under the Code.

(c) Nothing in this PPA shall be construed to convey to Host Customer a license or other right to trademarks, copyrights, technology or other intellectual property of Owner or associated with the SEF.

(d) In no event shall the Owner be considered a public utility by the Host Customer or any third party entity.

8.2 Array Loss.

(a) Owner shall bear the risk of any Array Loss excluding, however, any Array Loss caused totally or partially by the negligence, gross negligence or intentional misconduct of Host Customer or Host Customer's agents, representatives, vendors, visitors, employees, contractors or invitees (collectively, "**Host Customer Misconduct**"), shall be the responsibility of the Host Customer, its agents, representatives, vendors, visitors, employees, contractors or invitees that caused the Array Loss.

(b) In the event of any Array Loss that, in the reasonable judgment of Owner, results in less than total damage, destruction or loss of the Array, this PPA will remain in full force and effect with respect to such Array and Owner will, at Owner's sole cost and expense, repair or replace the Array as quickly as practicable. Notwithstanding the foregoing, to the extent that such Array Loss has been caused by Host Customer Misconduct, Host Customer shall, promptly upon demand from Owner, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this PPA, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. To the extent that such Array Loss has been caused by Owner, Owner shall, promptly upon demand from Host Customer, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, Actual Annual Savings (defined in Exhibit H), loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall deposit or post security acceptable to the damaged Party reasonably estimated by the damaged Party.

(c) In the event of any Array Loss that, in the reasonable judgment of Owner, results in total damage, destruction or loss of the Array, Owner shall, within twenty (20) Business Days following the occurrence of such Array Loss, notify Host Customer whether Owner is willing, notwithstanding such Array Loss, to repair or replace the Array.

(i) In the event that Owner notifies Host Customer that Owner is not willing to repair or replace the Array, this PPA will terminate automatically upon the effective date of such notice and Owner shall promptly remove the Array from the Property in accordance with Section 2.3 above. If such Array Loss has been caused by Owner, Owner shall, within thirty (30) Business Days following such termination, be obligated to pay to Host Customer, the Owner Termination Payment for that contract year as specified in Exhibit J. If such Array Loss has been caused by Host Customer Misconduct, Host Customer shall, within thirty (30) Business Days following such termination, pay to Owner, as liquidated damages, an amount equal to the Host Customer Optional Termination Payment, applicable as of such termination date, which obligation shall survive the termination of this PPA with respect to such Array.

(ii) In the event that Owner notifies Host Customer that Owner is willing to repair or replace the Array, the following shall occur: (A) this PPA will remain in full force and effect; (B) Owner will repair or replace the Array as quickly as economically practicable; (C) if such Array Loss has been caused, totally or partially, by Host Customer Misconduct, Host Customer shall, promptly upon demand from Owner, pay all

damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this PPA, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any; and (D) if such Array Loss has been caused, totally or partially, by Owner, Owner shall, promptly upon demand from Host Customer, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, Actual Annual Savings (defined in Exhibit H), loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall pre-pay or post security acceptable to the other Party for any repair expenses reasonably estimated by that Party.

8.3 Insurance. The Parties agree to provide insurance in accordance with Exhibit E attached hereto.

8.4 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this PPA (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations under this PPA; *provided, however*, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues.

8.5 Termination due to Force Majeure. If a Claiming Party claims Force Majeure for a consecutive period of one (1) year or longer, then either Party may terminate this PPA, in whole or in part, without any liability to the Claiming Party as a result of such termination and Owner shall promptly remove the SEF from the Property at its expense.

8.6 Change in Law. The Parties acknowledge and agree that the Energy Payment Rate is based on assumptions related to the availability to Owner of the Environmental Incentives. In the event of the elimination or alteration of one or more Environmental Incentives or any other change in Law that results in a material adverse economic impact on Owner in respect of this PPA (including due to a Law that increases Owner’s cost of compliance with this PPA), the Parties shall work in good faith to amend the provisions of this PPA within twenty (20) Business days after such elimination or alteration, as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated by this PPA as of the Effective Date.

ARTICLE 9. EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An “**Event of Default**” means, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(a) such Party’s failure to make, when due, any payment required under this PPA if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the other Party (the “**Non-Defaulting Party**”);

(b) any representation or warranty made by such Party in this PPA is false or misleading in any material respect when made or when deemed made or repeated if such breach is not cured or remedied (including by payment of money to the Non-Defaulting Party) within twenty-five (25) Business Days after receipt of written notice from the Non-Defaulting Party;

(c) the failure to perform any material covenant or obligation set forth in this PPA, if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the Non-Defaulting Party (provided that so long as the Non-Defaulting Party has initiated and is diligently attempting to effect a cure, such cure period shall be extended for an additional period not to exceed ninety (90) days), except in connection with Owner's failure to maintain insurance as provided in Exhibit E hereto, in which case such cure period shall be thirty (30) days;

- (d) Host Customer becomes Bankrupt, if permitted by applicable law;
- (e) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party;
- (f) Landlord (as defined in the Lease), transfers any right, title and interest in the Premises, which transfer interferes with the System operations as contemplated under the terms of the Lease and this PPA, unless (i) Landlord's transferee agrees to be bound by the terms of the Lease and this PPA, and (ii) Landlord's transferee is reasonably acceptable to Owner; or,
- (g) Landlord defaults under the Lease and such default interferes with the System operation for more than thirty (30) days.
- (h) with respect to Host Customer, Host Customer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and (i) the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Host Customer under this PPA, and any existing agreements required for the continued receipt of Environmental Incentives, Environmental Attributes or Reporting Rights by Owner (or to otherwise reasonably cooperate with Owner with respect to any additional agreements or other documentation or actions in connection therewith), either by operation of law or pursuant to an agreement reasonably satisfactory to Owner and (ii) the resulting or transferee entity's Credit Rating is not reasonably acceptable to Owner.

9.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the Non-Defaulting Party may (a) pursue applicable remedies or damages at law or equity, as provided in Sections 9.3 through 9.7. Non defaulting parties will additionally have the right:

- (a) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than ninety (90) days after the date such notice is effective, as the date on which this PPA shall terminate ("Early Termination Date"), except in connection with any insurance-related event of default as provided in Section 9.1(c) and (e) of this Article 9, for which an Early Termination Date shall be not later than thirty (30) days after the date that such notice is effective;
- (b) to withhold any payments due to the Defaulting Party under this PPA; and
- (c) to suspend performance due to the Defaulting Party under this PPA. In the event that the Non-Defaulting Party designates an Early Termination Date, this PPA will terminate as of the Early Termination Date.

9.3 Host Customer Rights Upon Default. In the event that Host Customer is the Non-Defaulting Party, Host Customer may elect to terminate this PPA, in which event Host Customer will be entitled, at its sole and exclusive option and in its sole and absolute discretion to require Owner to remove the SEF, as provided in Section 2.3 above, and to pay the Owner Termination Payment for the Contract Year as listed in Exhibit J Notwithstanding any other provision of this Agreement, prior to the exercise of its remedies under this section 9.3, Host Customer shall allow customary notice and cure rights for the benefit of any person who provides financing for the SEF to Owner. Such notice and cure rights shall be set forth in Host Customer's consent to assignments or transfers to such financing parties, such as a Consent to Collateral Assignment or a Consent to Sale and Leaseback, as provided for in Section 17.3 hereof.

9.4 Owner Rights Upon Default. In the event that Owner is the Non-Defaulting Party,

- (a) Owner may obtain a court order of specific performance of this PPA, to which Host Customer hereby consents, pursuant to which Owner shall continue to deliver Energy to Host Customer and Host Customer shall be obligated to pay each PPA payment as the same become due. Host Customer hereby agrees that an order of specific performance directing Host Customer to accept and purchase Energy as provided in Section 4.1 and Section 4.2 of this PPA is a necessary and appropriate remedy, and not to oppose Owner's application for such relief on an expedited basis.
- (b) Alternatively, after a thirty (30) Business Day period following a Host Customer Event of Default, with proper notice having been given, Owner may terminate this PPA and elect, in its sole discretion, to continue to operate the SEF and sell Energy to any third party or parties, and shall be entitled to collect as actual

and consequential damages, (a) an amount equal to the difference between (1) the amounts actually received from the sale of Energy to any third party or parties and (2) the amount that would have been due from Host Customer, plus (c) the cost of connection and metering necessary to deliver Energy to such third party or parties. Owner's rights under this Section 9.4(b) shall survive termination of the PPA by Owner under this Section 9.4(b).

(c) In the event that Owner elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Owner as a result of termination of this PPA subject, however, to Section 9.7 below.

9.5 Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this PPA.

9.6 Remedies Cumulative. Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this PPA or at law or in equity. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this PPA.

9.7 Unpaid Obligations. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 10.

INVOICING AND PAYMENT; HOST CUSTOMER ADMINISTRATION OF PLEDGED REVENUES

10.1 Invoicing and Payment. Owner shall prepare and submit invoices to Host Customer Accounts Payable, Department of Finance by the 7th day of the month immediately following the billing period. All invoices under this PPA will be due and payable not later than twenty (20) Business Days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Payments shall be made from utility cost savings, as set out at Section 6-23-3 NMSA 1978. Said invoice shall include the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

10.2 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this PPA at any time within four (4) years following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as otherwise expressly provided in this PPA, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

10.3 Netting and Setoff. The Parties may net any and all mutual debts and payment obligations that are due and owing under this PPA and/or the Lease Agreement between the Parties of even date herewith for Owner's placement of the SEF on Host Customer's property (the "Lease"). Accordingly, all amounts owed by each Party to the other Party under this PPA and/or the Lease, including any related damages and any applicable interest, payments or credits, may be netted such that only the excess amount remaining due will be paid by the Party that owes it. Each Party shall have the right to set off any undisputed amount due and owing to such Party from the other Party under this PPA and/or the Lease against any undisputed amount due and owing from such Party to the other Party under this PPA and/or the Lease.

10.4 Records and Audits. Each Party will keep, for a period not less than five (5) years, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments relating to this PPA. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the

other Party, examine the other Party's records pertaining to this PPA during such other Party's normal business hours.

10.5 Currency. All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

**ARTICLE 11.
REPRESENTATIONS AND WARRANTIES; HOST CUSTOMER FINDINGS AND
ACKNOWLEDGEMENT**

11.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this PPA are within its corporate power and authority, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

(b) this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) it is acting for its own account, and has made its own independent decision to enter into this PPA, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;

(e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates;

(f) except as previously disclosed in writing to the other Party there is no pending or, to the knowledge of such Party, threatened litigation, action or proceeding against such Party which could reasonably be expected to have a material adverse effect on such Party or its ability to perform its obligations under this PPA or the License or which purports to affect the legality, validity or enforceability of this PPA or the transactions contemplated hereby;

(g) except as previously disclosed in writing to the other Party there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to such Party;

(h) such Party is not a "foreign person" and such Party will not assign or otherwise transfer its rights under this PPA to a "foreign person", whereas a "foreign person" is defined as a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, and any other person that is not a U.S. person;

(i) to Host Customer's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the SEF; and

(j) this PPA is entered into pursuant to and in compliance with the Public Facility Energy Efficiency and Water Conservation Act, Sections 6-23-1 through 6-23-10 NMSA 1978.

11.2 Host Customer Findings. Pursuant to Section 6-23-3(A)(1) and (2) NMSA 1978, Host Customer has made the following findings:

(a) The amount that Host Customer would spend on the energy conservation measures, i.e. the SEF under the PPA, recommended by Owner and as provided in this PPA is not likely to exceed the cumulative amount of utility cost savings of the energy conservation measures proposed by Owner and as provided in this PPA over the shorter of (1) the useful life of the proposed conservation measures, i.e. the SEF (which useful life is expected to be at least 25 years, excluding normal repair and replacement costs); and,

(b) The Owner is a qualified provider and can provide a written guarantee that the utility cost savings will meet or exceed the Host Customer costs of the conservation measures, i.e. the SEF under the PPA.

(c) Owner or any successor or assignee under this PPA shall maintain a direct financial relationship with Host Customer, irrespective of the specific ownership structure utilized by Owner in connection with the Environmental Attributes, as provided in Section 6-23-3(B)(2) NMSA 1978.

11.3 Host Customer Acknowledgement Regarding Owner's Status under Section 366 of the Bankruptcy Code.

(a) Host Customer acknowledges and agrees that, for purposes of this PPA, Owner is not a “utility” as such term is used in Section 366 of the United States Bankruptcy Code, and Host Customer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Host Customer is a debtor; provided that, as of the Effective Date, Host Customer is not permitted to seek bankruptcy protection under the laws of the State of New Mexico.

(b) Additionally, the Parties agree that this Agreement constitutes a ‘forward contract’ as defined in the United State Bankruptcy Code, and therefore not subject to rejection by a trustee in a bankruptcy proceeding.

**ARTICLE 12.
INDEMNITY; LIMITATIONS**

12.1 Indemnity. To the fullest extent permitted by the laws of the State of New Mexico, each Party (the “*Indemnitor*”) hereby indemnifies and agrees to defend and hold harmless the other Party and its Affiliates, respective officers, directors, officers, employees and agents (collectively, the “*Indemnitee*”) from and against any and all Indemnity Claims, whether nor not involving a third-party claim, caused by, resulting from, any negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor will not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents; and provided further, that Host Customer shall be obligated to indemnify Owner solely from Pledged Revenues, and solely to the extent permitted under the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978. Nothing in this Section 12.1 is intended to limit the respective remedies for default under this PPA as provided in Article 9 hereof.

12.2 Limitation of Remedies, Liability and Damages. The Parties hereby confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor’s liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor’s liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Without prejudice to the calculation of the amount of any Host Customer Optional Termination Payment, Owner Termination Payment or Purchase Price, and except as otherwise expressly provided in this PPA, neither Party will be liable for consequential, incidental, punitive, special, exemplary or indirect damages, lost profits, lost savings or other business interruption damages, by statute, in tort or under contract, under any indemnity provision or otherwise; *provided, however,* that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct or for or with respect to any third party Indemnity Claims. The limitations imposed herein on remedies and the measure of damages are without regard to the applicable cause or causes, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive; provided, that nothing in this PPA shall be construed as requiring either Party as Indemnitor to indemnify the other Party as Indemnitee for the Indemnitee's negligence in connection with construction services performed pursuant to this PPA.

12.3 Limitation on Warranties. Except as expressly provided in this PPA, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

**ARTICLE 13.
SEF PURCHASE**

13.1 Offer to Purchase. Host Customer may offer to purchase all of Owner's right, title and interest in and to the SEF Assets on the terms set forth in this PPA (the "**Purchase Offer**"). The Purchase Offer may be made by Host Customer during the Exercise Period (as defined below) following a Final Determination (as defined below) related to a valuation performed pursuant to this Article 13.

13.2 Host Customer Request for Appraisal of SEF Value.

(a) Host Customer shall have the right to provide a notice to Owner requiring a determination of the Fair Market Value of the SEF in accordance with Section 13.4 at any time within the period that is at least 180 days prior to: (A) the 6th anniversary of the first Commercial Operation Date, (B) every four (4) years thereafter, (C) the end of the Initial Term, or (D) any Extension Term but no more than 270 days prior to the end of the Initial Term or any Extension term.

(b) Promptly following receipt of Host Customer's notice pursuant to Section 13.2(a) above, Owner shall make the SEF Assets, including records relating to the operations, maintenance, and warranty repairs, available to Host Customer for its inspection during normal business hours.

13.3 Selection of Independent Appraiser. Within twenty (20) Business Days of Owner's receipt of a notice provided under Section 13.2, Owner and Host Customer shall mutually agree upon an Independent Appraiser.

(a) The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Fair Market Value of the SEF (the "**Preliminary Determination**").

(b) Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Owner and Host Customer, together with all supporting documentation that details the calculation of the Preliminary Determination. Owner and Host Customer shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination; *provided* that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the "**Final Determination**") to Owner and Host Customer, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination.

13.4 Calculation of Proposed Purchase Price. The proposed purchase price (the "**Proposed Purchase Price**") for the SEF Assets shall be equal to the Fair Market Value as determined by the Independent Appraiser. Notwithstanding, if either Party determines that the Fair Market Value is not an acceptable price for the SEF, such Party shall not be obligated to either buy or sell the SEF, as the case may be.

13.5 Costs and Expenses of Independent Appraiser. Owner and Host Customer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

13.6 Purchase of SEF.

(a) If both Host Customer and Owner agree to the Proposed Purchase Price, Host Customer shall have twenty (20) Business Days from the date of the Final Determination (such period, the "**Exercise Period**"), to give notice of its intent to purchase the SEF at the Proposed Purchase Price (an "**Exercise Notice**") to Owner. Once Host Customer delivers the Exercise Notice to Owner, Host Customer shall become obligated to purchase, and Owner shall become obligated to sell, the SEF for the Proposed Purchase Price (which shall, thereafter and below, be referred to as the "**Purchase Price**").

(b) Terms of SEF Purchase. On the Transfer Date (a) Owner shall surrender and transfer to Host Customer on an as-is, where-is basis, but free of liens and encumbrances, all of Owner's right, title and interest in and to all SEF Assets and shall retain all liabilities arising from or related to the SEF Assets prior to the Transfer Date, (b) Host Customer shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the SEF Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the SEF Assets in Host

Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the SEF Assets to Host Customer.

13.7 Transfer Date. The closing of any sale of the SEF (the “*Transfer Date*”) pursuant to this Article 13 will occur no later than sixty (60) Business Days following the date of delivery of the Exercise Notice to Owner.

ARTICLE 14. CONFIDENTIALITY; PUBLICITY

14.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party’s performance under this PPA. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for purposes permitted by this PPA or required under the New Mexico Inspection of Public Records Act) the Party’s or its Affiliates’ officers, employees, actual and potential sources of debt and equity financing, counsel, accountants or advisors (collectively, “*Representatives*”) who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein) except in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; *provided, however*, that each Party will use reasonable efforts to prevent or limit any such disclosure. “*Confidential Information*” means information provided by one Party to the other in connection with the negotiation or performance of this PPA that is clearly labeled or designated by the disclosing party as “confidential” or “proprietary” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing.

(b) Notwithstanding anything to the contrary contained herein, in order for the transactions contemplated by this PPA not to be considered a “Confidential Transaction” within the meaning of United States Treasury Regulation 1.6011-4(b)(3), the Parties (and each Representative of the Parties) may (a) consult any tax advisor/consultant regarding the tax treatment and tax structure relating to the transactions contemplated by this PPA, and (b) may at any time disclose to any Person, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this PPA and all materials of any kind (including tax opinions or other tax analysis) that are provided relating to such tax treatment or tax structure.

(c) The obligations of the Parties under this Article 14 will survive for a period of two (2) years from and after the termination of the transaction to which any Confidential Information relates.

14.2 Publicity.

(a) The Parties agree they will, from time to time, issue written press releases regarding the SEF and that they shall cooperate with each other in connection with the issuance of such written releases. Nothing in this Section 14.2 shall be construed as a limitation on the Host Customer's elected or appointed officials to respond to questions or inquiries from members of the public or others concerning the SEF in accordance with Section 14.2(c).

(b) Subject only to the provisions on confidential information in Section 14.1 above, Owner shall have the right to publish any information or statement related to the SEF on its website (or the website of an Affiliate) and through other forms of media. Such information may include, but is not limited to, the location of the SEF, the name of the Host Customer and other features of the SEF.

(c) Host Customer shall have the right to publicize, without prior approval by Owner, that it is serving as a “solar host” for the SEF *provided, however*, such publicity shall not in any way claim ownership over the SEF nor shall it in any way claim ownership over the Environmental Incentives or Environmental Attributes. Additionally, Host Customer shall have the right to display photographs of the SEF in its advertising and promotional materials, provided, that any such materials identify Owner as the “developer, owner and operator” of the SEF.

ARTICLE 15.
DISPUTE RESOLUTION

15.1 The Parties, through their respective authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this PPA (a “*Dispute*”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

15.2 In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 15.1, both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

15.3 A notice of dispute shall not be considered a notice of default as described in Section 9.2. The parties will endeavor to settle disputes amicably prior to giving such notice.

15.4 Any legal action or proceeding brought by either of the Parties against the other Party with respect to this PPA or the transactions in connection with or relating hereto, will be brought in the courts of the State of New Mexico in the Second Judicial District and, by execution and delivery of this PPA, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

ARTICLE 16.
NOTICES

16.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this PPA expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

Host Customer:

Albuquerque Bernalillo County Water Authority
Attn: Executive Director
One Civic Plaza NW Room 5012
Albuquerque, NM 87102
(505) 289-3100
msanchez@abcwua.org

Owner:

Affordable Solar Installation, Inc
4840 Pan American Freeway N
Albuquerque, NM 87109
Telephone: (505) 944-4200
ryan.centerwall@affordable-solar.com
Attention: CEO

**ARTICLE 17.
ASSIGNMENT; FINANCING**

17.1 Assignment.

(a) Owner shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this PPA without the prior written consent of the Host Customer, *provided, however*, that any such assignee pursuant to this clause shall agree to be bound by the terms and conditions hereof. Owner shall notify the Host Customer in writing at least thirty (30) days prior to any assignment of its rights, duties or obligations under this PPA.

(b) This PPA will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(c) Owner shall provide written notice of assignment to Host Customer, which notice shall identify the proposed assignee, its state of incorporation or organization, its managing member or equivalent officer or entity, all contact information and such other information as is readily available to Owner concerning the proposed assignee.

17.2 Financing.

(a) Owner may pledge its interest in this PPA, including any rights to payment, and the SEF, as security for loans or financing. If any of Owner's Financing Parties requests any amendments or clarifications to the terms and conditions of this PPA, Host Customer agrees to consider any such requests in good faith.

(b) Host Customer acknowledges that Owner will be financing the acquisition and installation of the SEF with financing accommodations from one or more financial institutions and that Owner's obligations thereunder will be secured by, among other collateral, a pledge or collateral assignment of this PPA and Owner's rights to payment and a first priority security interest in the SEF or may, in connection with a sale and leaseback, be transferred to a purchaser of the SEF who leases it back to Owner. In order to facilitate such necessary financing, Host Customer acknowledges that it has been advised that part of the collateral securing financial accommodations of Owner is the granting of a first priority security interest in the SEF to Owner's Financing Parties to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Property. Host Customer agrees to such filings so long as they reflect the Parties' agreement that any filing to perfect or provide notice of such security interest clearly documents the Parties' intent that the SEF is considered personal property only and is not considered a fixture to the Property.

(c) Host Customer agrees that upon Owner's request it will use commercially reasonable efforts to confirm the ownership of the SEF by Owner and/or Owner's Financing Parties, the existence of Owner's

Financing Parties' security interest and the fact that the SEF is not part of the Property or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

17.3 Additional Cooperation with Financing. Host Customer acknowledges that Owner will be financing the development, acquisition, installation and/or operation of the SEF and Host Customer agrees that it shall reasonably cooperate with Owner and Owner's Financing Parties in connection with such financing for the SEF, including without limitation by (i) furnishing such information, including but not limited to the Financial Statements, as may be reasonably requested by Owner or Owner's Financing Parties, (ii) delivering a consent to sale or alternative documentation as may be reasonably requested by Owner's Financing Parties; and (iii) providing such opinions of counsel and other matters as Owner or Owner's Financing Parties may reasonably request.

ARTICLE 18. MISCELLANEOUS

18.1 Governing Law. This PPA will be governed by the Laws of the State of New Mexico, without giving effect to principles of conflicts of laws.

18.2 Entire Agreement; Amendments. This PPA (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. This PPA shall be governed and construed and enforced in accordance with the laws of the State of New Mexico. Except as otherwise expressly provided in this PPA, in order to be effective, any amendment, modification or change to this PPA must be in writing and executed by both Parties.

18.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege or remedy hereunder will operate as a waiver thereof. No waiver by either party of a breach of any term or provision contained herein shall be effective unless signed and in writing by the waiving party. No consent by either party to, or waiver of, a breach by either Party, whether express or implied, shall be construed, operate as or constitute a consent to, waiver of or excuse of any other or subsequent or succeeding breach by either Party.

18.4 Severability. If any part, term, or provision of this PPA is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this PPA will remain in full force and effect.

18.5 No Third Party Beneficiaries. Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Owner's Financing Parties to the extent expressly provided herein.

18.6 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.7 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint ventures or agents of each other for any purpose, unless expressly stated otherwise herein.

18.8 Counterparts. This PPA may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

18.9 Further Assurances.

(a) The Parties acknowledge that adjustments in the terms and conditions of this PPA may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, [or to comply with conditions or requirements imposed in connection with any Governmental Approval pursuant to Section 6-23-5 NMSA 1978] that could not be anticipated at the date of execution of this PPA or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable modifications or amendments as are reasonably required to comply therewith.

(b) The Parties shall, at their own cost and expense, do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

18.10 General Interpretation. The terms of this PPA have been negotiated by the Parties hereto and the language used in this PPA shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This PPA shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the PPA. No rule of strict construction will be applied against any Person.

[SIGNATURE PAGE FOLLOWS]

Intending to be legally bound, Owner and Host Customer have signed this Power Purchase Agreement through their duly authorized representatives effective as of the date set forth by their respective signatures below.

“OWNER:”

Date: _____

AFFORDABLE SOLAR INSTALLATION, INC
a New Mexico Corporation

By: _____
Name: Kevin Bassalleck
Title: Director of Business Development

“HOST CUSTOMER:”

Date: _____

Albuquerque Bernalillo County Water Utility Authority,
a political subdivision of the State of New Mexico

By: _____
Name:
Title:

EXHIBIT A-1

PRELIMINARY SYSTEM DESCRIPTION

This Array description and design are preliminary and subject to change based upon permitting, financing and construction requirements.

A. ARRAY SIZE: SYSTEM A – METER # 660855 1,136.2 KW DC

Historical electric usage data is provided in **Exhibit A-3**. This data was used in conjunction with other information, including the following to determine the optimum sizing of the Array:

1. Estimated daily and seasonally varying window of solar generation
2. Sun's angle of declination
3. Insolation data from the following source: NREL.
4. A tier 1 module manufacturer
5. Terrain
6. Temperature range of operation
7. Location of the site Property
8. Latitude, longitude and elevation
9. Anticipated peak and off-peak operation.
10. Optimal savings under existing utility and state incentives and the State Production Tax Credit.

The Array shall produce power that is inverted and transformed to the three-phase system base electrical distribution system. The power supplied to the Host Customer shall be free from power quality issues such as surge, undervoltage, overvoltage, harmonics, voltage sag, or voltage swell. In the event of a Utility power outage at either Host Customer facility, the Array will automatically stop producing power. Once Utility power is restored and detected, the Array will automatically resume producing power.

The Array shall be protected on all sides to prevent unauthorized persons from entering the area, tampering with the Array and to protect against the danger of electric shock. As a minimum, the height of the fence shall be six feet. The Host Customer shall approve the type of fence prior to this PPA becoming effective.

Codes and Standards. The Array design complies with the current versions of the National Electrical Code (NEC), Unified Facilities Criteria (UFC) 3-550-03FA DESIGN: Electrical Supply Power and Distribution, National Electric Safety Code (NESC), and other applicable federal, state, and industry standards as applied to this design. All work performed by Owner shall be guided by these specifications in conjunction with this Array.

EXHIBIT A-2

PRELIMINARY SYSTEM DESCRIPTION

This Array description and design are preliminary and subject to change based upon permitting, financing and construction requirements.

B. ARRAY SIZE: SYSTEM B – METER # 660859 741.0 KW DC

Historical electric usage data is provided in **Exhibits A-3 and A-4**. This data was used in conjunction with other information, including the following to determine the optimum sizing of the Array:

11. Estimated daily and seasonally varying window of solar generation
12. Sun's angle of declination
13. Insolation data from the following source: NREL.
14. A tier 1 module manufacturer
15. Terrain
16. Temperature range of operation
17. Location of the site Property
18. Latitude, longitude and elevation
19. Anticipated peak and off-peak operation.
20. Optimal savings under existing utility and state incentives and the State Production Tax Credit.

The Array shall produce power that is inverted and transformed to the three-phase system base electrical distribution system. The power supplied to the Host Customer shall be free from power quality issues such as surge, undervoltage, overvoltage, harmonics, voltage sag, or voltage swell. In the event of a Utility power outage at either Host Customer facility, the Array will automatically stop producing power. Once Utility power is restored and detected, the Array will automatically resume producing power.

The Array shall be protected on all sides to prevent unauthorized persons from entering the area, tampering with the Array and to protect against the danger of electric shock. As a minimum, the height of the fence shall be six feet. The Host Customer shall approve the type of fence prior to this PPA becoming effective.

Codes and Standards. The Array design complies with the current versions of the National Electrical Code (NEC), Unified Facilities Criteria (UFC) 3-550-03FA DESIGN: Electrical Supply Power and Distribution, National Electric Safety Code (NESC), and other applicable federal, state, and industry standards as applied to this design. All work performed by Owner shall be guided by these specifications in conjunction with this Array.

EXHIBIT A-3

HISTORICAL USAGE – SYSTEM A - METER # 660855

TO BE POPULATED AND VERIFIED BY HOST

<u>MONTH</u>	<u>KWH USAGE</u>
JANUARY	X,XXX,XXX
FEBRUARY	X,XXX,XXX
MARCH	X,XXX,XXX
APRIL	X,XXX,XXX
MAY	X,XXX,XXX
JUNE	X,XXX,XXX
JULY	X,XXX,XXX
AUGUST	X,XXX,XXX
SEPTEMBER	X,XXX,XXX
OCTOBER	X,XXX,XXX
NOVEMBER	X,XXX,XXX
DECEMBER	X,XXX,XXX

EXHIBIT A-4

HISTORICAL USAGE – SYSTEM B METER # 660859

TO BE POPULATED AND VERIFIED BY HOST

<u>MONTH</u>	<u>KWH USAGE</u>
JANUARY	X,XXX,XXX
FEBRUARY	X,XXX,XXX
MARCH	X,XXX,XXX
APRIL	X,XXX,XXX
MAY	X,XXX,XXX
JUNE	X,XXX,XXX
JULY	X,XXX,XXX
AUGUST	X,XXX,XXX
SEPTEMBER	X,XXX,XXX
OCTOBER	X,XXX,XXX
NOVEMBER	X,XXX,XXX
DECEMBER	X,XXX,XXX

EXHIBIT B

PROPERTY

Legal Description:

TR A PLAT OF TRACT A CITY OF ALBUQUERQUE WATER TREATMENT FACILITY
CONT 162.5256 AC

EXHIBIT C

SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. Definitions. The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

- (a) *"Actual Annual Cost of the Energy Conservation Measure"* shall have the meaning ascribed to it in Exhibit I hereto.
- (b) *"Actual Annual Energy Output"* shall have the meanings ascribed to it in Exhibit F and Exhibit I hereto.
- (c) *"Actual Annual Savings"* shall have the meaning ascribed to it in Exhibit I hereto.
- (d) *"Actual Annual Utility Cost Savings"* shall have the meaning ascribed to it in Exhibit I hereto.
- (e) *"Adjusted Actual Annual Energy Output"* shall have the meaning ascribed to it in Exhibit F hereto.
- (f) *"Adjusted Annual Savings"* shall have the meaning ascribed to it in Exhibit I hereto.
- (g) *"Affiliate"* means, with respect to any entity, such entity's general partner or manager, or any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.
- (h) *"Annual Output Guaranty Level"* shall have the meaning ascribed to it in Exhibit F hereto.
- (i) *"Annual Savings Guaranty Amount"* shall have the meaning ascribed to it in Exhibit I hereto.
- (j) *"Array"* means each operating solar array which consists of modules and inverters that interconnect to a single point of interconnection and serve a customer load located on an individual meter.
- (k) *"Array Loss"* means loss, theft, damage or destruction of the Array or SEF Assets, or any other occurrence or event that prevents or limits the Array from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure).
- (l) *"Bankrupt"* means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets except for, with respect to Owner, any enforcement of rights by Owner's Financing Parties pursuant to the Financing Documents; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any

jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(m) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(n) **"Claiming Party"** shall have the meaning ascribed to it in Section 8.4 of the PPA.

(o) INTENTIONALLY DELETED.

(p) **"Code"** means the Internal Revenue Code of 1986, as amended.

(q) **"Commercial Operation"** means that the subject Array is ready for regular, daily operation, has been connected to the Property electrical system, has undergone testing as provided herein, is in compliance with applicable Laws in all respects and is capable of producing Energy Output.

(r) **"Commercial Operation Date"** means the first day on which the subject Array is ready for Commercial Operation as certified in writing by Owner to Host Customer in the applicable Notice of Commercial Operation.

(s) **"Confidential Information"** shall have the meaning ascribed to it in Section 14.1(a) of the PPA.

(t) **"Consulting Engineer"** means a professional analyst that is hired for the purpose of recommending the utility rates that are necessary to raise the revenue to meet all of the Host Customer's obligations.

(u) **"Contract Year"** means the consecutive 12 month period commencing on the first Commercial Operation Date.

(v) **"Costs"** means (i) all reasonable attorneys' fees and expenses incurred by the relevant Party in connection with the termination of this PPA and (ii) all reasonable costs and expenses incurred by the relevant Party in removal of the Array from the Property; provided that in the case of clauses (i) and (ii), the relevant Party uses commercially reasonable effort to mitigate such Costs.

(w) **"Credit Rating"** shall mean, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured and senior long-term debt or deposit obligations (not supported by third party credit enhancement) by a national rating agency, such as Standard & Poor's Ratings Services (a division of McGraw Hill), Moody's Investors Service, Inc., Fitch Ratings, Dun & Bradstreet, or their respective successors.

(x) **"DAS"** shall have the meanings ascribed to it in Exhibit F and Exhibit I hereto.

(y) **"Defaulting Party"** shall have the meaning ascribed to it in Section 9.1 of the PPA.

(z) **"Delivery Point"** means the agreed location or locations where Energy Output is to be delivered and received under this PPA (Host Customer's side of the meter(s)), and specifically the electrical tie-in point(s) between the SEF and the Property.

(aa) **"Dispute"** shall have the meaning ascribed to it in Section 15.1 of the PPA.

(bb) **"Effective Date"** shall have the meaning ascribed to it in the preamble of the PPA.

(cc) **"Energy"** means electric energy (alternating current, expressed in kilowatt-hours).

(dd) **"Energy Commission"** means the Public Regulation Commission.

(ee) **"Energy Conservation Measure"** shall have the meaning ascribed to it in Exhibit I hereto.

(ff) **“Energy Deficiency Quantity”** shall have the meaning ascribed to it in Section 7.3(c)(v) of the PPA.

(gg) **“Energy Output”** means the actual and verifiable amount of Energy generated by the SEF and delivered to Host Customer at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device. The Energy Output delivered to Host Customer at the Delivery Point shall be deemed to be equal to the energy measured at the Metering Device; actual energy losses between the Metering Device and the Delivery Point shall not affect the Energy Output.

(hh) **“Energy Payment Rate”** shall have the meanings ascribed to it in Section 4.3 of the PPA and Exhibit I hereto.

(ii) **“Energy Payment Rate Increase Factor”** means the factor expressed in percent by which the Energy Payment Rate shall increase from one Contract Year to another as set forth in Exhibit B-1 (I) hereto.

(jj) **“Energy Surplus Quantity”** shall have the meaning ascribed to it in Section 7.3(c)(v) of the PPA.

(kk) **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the SEF, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Owner, any Affiliate, or any investor of Owner to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the SEF, (ii) emission reduction credits encumbered or used by the SEF for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(ll) **“Environmental Incentives”** means any and all (i) investment tax credits attributable to the SEF, any SEF Asset or Energy Output, (ii) production tax credits attributable to the SEF, any SEF Asset or Energy Output, (iii) accelerated depreciation attributable to the SEF, any SEF Asset or Energy Output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to the SEF, any SEF Asset or Energy Output, irrespective of whether such Environmental Incentives accrue for the benefit of Owner, any Affiliate or any investor of Owner or its Affiliate.

(mm) **“Estimated Annual Cost of the Energy Conservation Measure”** shall have the meaning ascribed to it in Exhibit I hereto.

(nn) **“Estimated Annual Energy Output”** shall have the meaning ascribed to it in Exhibit F hereto.

(oo) **“Estimated Annual Utility Cost Savings”** shall have the meaning ascribed to it in Exhibit I hereto.

(pp) **“Event of Default”** shall have the meaning ascribed to it in Section 9.1 of the PPA.

- (qq) **“Exercise Notice”** shall have the meaning ascribed to it in Section 13.6(a) of the PPA.
- (rr) **“Exercise Period”** shall have the meaning ascribed to it in Section 13.6(a) of the PPA.
- (ss) **“Extension Term”** shall have the meaning ascribed to it in Section 2.1(b) of the PPA.
- (tt) **“Fair Market Value”** means the value of the SEF determined by an Independent Appraiser based on either (a) the equipment value of solar energy facilities located in geographical proximity to the SEF and comparable in age, size, condition and actual average annual energy production, or (b) the applicable discount revenue forecast whichever amount is greater.
- (uu) **“Final Determination”** shall have the meaning ascribed to it in Section 13.3(b) of the PPA.
- (vv) **“Financial Statements”** means with respect to a Party, such Party’s most recently available audited balance sheet and statement of income and cash flows as provided in the most recently available audited report, prepared in accordance with generally accepted accounting principles (GAAP) and/or Public Accounting principles.
- (ww) **“Financing Documents”** means the loan and credit agreements, notes, bonds, indentures, security agreements, lease or license financing agreements, purchase agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the SEF, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered into from time to time.
- (xx) **Intentionally removed**
- (yy) **“Force Majeure”** means any event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the reasonable control, or is not the result of the negligence, of the Claiming Party, examples of ‘not within the reasonable control’ include, but are not limited to, lightning, blizzard, hurricane, earthquake, volcano, war, strikes, fires, floods, acts of God, and civil disobedience, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) Host Customer’s inability economically to use Energy purchased hereunder or to pay amounts owed hereunder or (ii) Owner’s ability to sell Energy at a price greater than the price of Energy Output under this PPA.
- (zz) **“General SEF Description”** means the conceptual design of the SEF as of the Effective Date. After the Effective Date, the Parties shall continue to work to refine and finalize the SEF General Description.
- (aaa) **“Governmental Approvals”** shall have the meaning ascribed to it in Section 3.1(d) of the PPA and shall specifically include approval of the PPA by the governing body of Host Customer pursuant to Section 6-23-5(A)(3) NMSA 1978; which approval shall include (1) a determination that the contracts and agreements comply with the Energy Efficiency and Water Conservation Act, Sections 6-23-1 through 6-23-11 NMSA 1978; and (2) certification by the Energy, Minerals and Natural Resources Department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable.
- (bbb) **“Governmental Charges”** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill

payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy Output of this PPA.

(ccc) **“Governmental Entity”** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(ddd) **“Gross Revenues”** means all income and revenues directly or indirectly derived by Host Customer from fees collected from customers of Host Customer's Electric Utility System. Such term also includes:

(i) all income derived from the investment of any money in the funds and accounts established in connection with the Utility System; and

(ii) property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the Utility System.

(eee) **“Host Customer”** shall have the meaning ascribed to it in the preamble of the PPA.

(fff) **“Host Customer Event”** shall have the meanings ascribed to it in Exhibit F and Exhibit I hereto.

(ggg) **“Host Customer Misconduct”** shall have the meaning ascribed to it in Section 8.2(a) of the PPA.

(hhh) **“Host Customer Optional Termination Payment”** means the amount stated on the Host Customer Optional Termination Payment *Schedule* attached to this PPA as Exhibit D-1 (I) for any given Contract Year. This amount will be paid by the Host Customer to Owner. The Host Customer Optional Termination Payment is calculated by taking the net present value of all net operating income (NOI) remaining in the initial term of the PPA. The NOI includes all PPA revenues and Renewable Energy Credit sales, minus operating costs. The NPV calculation uses a discount rate of 5%. Additionally, the Host Customer Optional Termination Payment for years 1-5 includes a cost reflecting recapture of the ITC, which would occur if a system is terminated in those years.

(iii) **“Indemnitee”** shall have the meaning ascribed to it in Section 12.1 of the PPA.

(jjj) **“Indemnitor”** shall have the meaning ascribed to it in Section 12.1 of the PPA.

(kkk) **“Indemnity Claims”** means all losses, liabilities, damages, costs, expenses and attorneys' fees, whether incurred by settlement or otherwise, related to injury to persons or damage to property.

(lll) **“Independent Appraiser”** means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the SEF. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Owner or any Affiliate of Owner or Host Customer or any Affiliate of Host Customer.

(mmm) **“Initial Term”** shall have the meaning ascribed to it in Section 2.1(a) of the PPA.

(nnn) **“kWh”** shall have the meanings ascribed to it in Exhibit F and Exhibit I hereto.

(ooo) **“Late Payment Interest Rate”** means, for any date, the lesser of (i) the per annum rate of interest equal to the Prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or, if not published on such day, on the most recent preceding day on which published), plus 4% and (ii) the maximum rate permitted by applicable Law.

(ppp) **“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this PPA or the transaction contemplated hereby.

(qqq) **“Metering Device”** means any and all meters at or before the Delivery Point needed for the registration, recording and transmission of information regarding the Energy Output generated by the SEF.

(rrr) **“Non-Defaulting Party”** shall have the meaning ascribed to it in Section 9.1(a) of the PPA.

(sss) **“Notice of Commercial Operation”** shall have the meaning ascribed to it in Section 2.4 of the PPA.

(ttt) **“Owner”** shall have the meaning ascribed to it in the preamble of the PPA.

(uuu) **“Owner Termination Payment”** means the amount stated on the *Termination Payment Schedule* attached to this PPA as Exhibit D-2 (i) for any given Contract Year, plus the Costs incurred and/or payable by Owner as a result of termination of this PPA with respect to each Array, as determined by Owner in a commercially reasonable manner.

(vvv) **“Owner's Financing Parties”** means any Persons, and their permitted successors and assignees, providing funding in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for the SEF.

(www) **“Parties”** shall have the meaning ascribed to it in the preamble of the PPA.

(xxx) **“Party”** shall have the meaning ascribed to it in the preamble of the PPA.

(yyy) **“Performance Assurance”** shall mean collateral in the form of either cash, letter(s) of credit, or other security reasonably acceptable to Owner.

(zzz) **“Performance Credit Balance”** shall have the meaning ascribed to it in Exhibit F hereto.

(aaaa) **“Performance Credit Difference”** shall have the meaning ascribed to it in Exhibit F hereto.

(bbbb) **“Performance Credits”** shall have the meaning ascribed to it in Exhibit F hereto.

(cccc) **“Performance Guaranty Difference”** shall have the meaning ascribed to it in Exhibit F hereto.

(dddd) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(eeee) **“Pledged Revenues”** means Pledged Utility Cost Savings Revenues.

(ffff) **“Pledged Utility Cost Savings Revenues”** means Actual Utility Cost Savings, payable from Gross Revenues (i.e., the gross revenues of Host Customer's Electric Utility Revenue Fund).

(gggg) **“PPA”** shall have the meaning ascribed to it in the preamble of the PPA.

(hhhh) **“PPA Payment Date”** means the 20th Business Day after applicable invoice date.

(iii) **“Preliminary Determination”** shall have the meaning ascribed to it in Section 13.3(a) of the PPA.

(jjj) **“Property”** shall have the meaning ascribed to it in each exhibit which describes the location of an Array.

(kkk) **“Proposed Purchase Price”** shall have the meaning ascribed to it in Section 13.4 of the PPA.

(lll) **“Purchase Offer”** shall have the meaning ascribed to it in Section 13.1 of the PPA.

(mmm) **“Purchase Price”** shall have the meaning ascribed to it in Section 13.6 of the PPA.

(nnn) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy 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); *excluding, however*, all Environmental Incentives.

(ooo) **“Replacement Energy Incremental Cost”** shall have the meanings ascribed to it in Exhibit I hereto.

(ppp) **“Reporting Rights”** means the right of Owner to report to any Governmental Entity, utility or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Owner owns the Environmental Attributes and the Environmental Incentives associated with the Energy Output.

(qqq) **“Representatives”** shall have the meaning ascribed to it in Section 14.1(a) of the PPA.

(rrr) **“Savings Credit Balance”** shall have the meaning ascribed to it in Exhibit I hereto.

(sss) **“Savings Credit Difference”** shall have the meaning ascribed to it in Exhibit I hereto.

(ttt) **“Savings Credits”** shall have the meaning ascribed to it in Exhibit I hereto.

(uuu) **“Savings Guaranty Difference”** shall have the meaning ascribed to it in Exhibit I hereto.

(vvv) **“SEF”** means the solar electric generating facility that produces the Energy Output sold and purchased under this PPA.

(www) **“SEF Assets”** means each and all of the assets of which the SEF is comprised, including Owner’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Property, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the SEF.

(xxx) **Intentionally removed**

(yyy) **“System Obligations”** means any bonds or other debt obligations currently outstanding or which may be issued in the future, the repayment of which is secured by the net revenues of the Utility System, i.e., the revenues remaining after paying System Operation and Maintenance Expenses.

(zzz) **“System Operation and Maintenance Expenses”** means all reasonable and necessary current expenses of the Utility System, in any particular fiscal year or period to which such term is

applicable, paid or accrued, relating to operating, maintaining and repairing the Utility System, including, without limitation:

(i) legal and overhead expenses of the various Host Customer departments directly related and reasonably allocated to the administration of the Utility System;

(ii) insurance premiums for the Utility System, including, without limitation, premiums for property insurance, public liability insurance and workers' compensation insurance, whether or not self-funded;

(iii) the costs of audits of the books and accounts of the Utility System;

(iv) salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies, including but not limited to electricity, used for or in connection with the current operation of the Utility System; and

(v) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the Utility System.

(aaaaa) ***“Term”*** means the Initial Term and any Extension Term.

(bbbbb) ***“Third Party Monitoring and Reporting Service Provider”*** means an unaffiliated third party, selected in each case by Owner, that reads and reports the Energy Output as recorded by the specified Metering Device.

(ccccc) ***“Transfer Date”*** shall have the meaning ascribed to it in Section 13.7 of the PPA.

(ddddd) ***“Utility”*** means the electric utility serving Host Customer in the service territory in which Host Customer is located.

(eeeeee) ***“Utility Documents”*** shall have the meaning ascribed to it in Section 3.1(e) of the PPA.

(fffff) ***“Utility System”*** means the municipal electric utility system owned and operated by Host Customer and designated as the Host Customer's electric utility system consisting of all properties, real, personal, mixed or otherwise now existing or hereafter acquired by Host Customer through acquisition, purchase, construction or otherwise, including all expansions extensions, enlargements and improvements of or to the electric utility system, and used in connection therewith or relating thereto, in any other related activity or enterprise of Host Customer designated by Host Customer's governing body as part of the electr system, either situated within or outside the limits of Host Customer.

2. Rules of Interpretation. In this PPA, unless expressly provided otherwise:

(a) the words “herein”, “hereunder” and “hereof” refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;

(b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;

(d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect

from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;

(j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a day is a reference to a calendar day unless the defined term "Business Day" is used, (ii) a month is a reference to a calendar month and (iii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) a reference to time is a reference to the time in effect in San Francisco, California on the relevant date except where specifically stated, e.g., local time in Albuquerque (Sections 2.1 (a) and (b)); and,

(q) if a payment prescribed under this PPA to be made by a Party on or by a given Business Day is made after 5:00 pm on such Business Day, it is taken to be made on the next Business Day.

EXHIBIT D

HOST CUSTOMER OPTIONAL TERMINATION PAYMENT

Year	Termination Value
1	7,003,257.78
2	6,903,927.63
3	5,820,221.93
4	5,156,625.98
5	4,657,242.37
6	4,230,433.68
7	4,037,775.91
8	3,985,155.30
9	3,925,276.38
10	3,851,740.04
11	3,755,088.82
12	3,633,103.86
13	3,508,886.79
14	3,375,487.55
15	3,230,967.93
16	3,086,466.62
17	2,947,635.47
18	2,799,483.55
19	2,641,959.74
20	2,476,605.32
21	2,296,449.52
22	2,101,368.86
23	1,890,642.60
24	1,663,254.38
25	1,418,387.97

This termination payment shall be prorated based on proportion of length of time in days during year to termination date, to the total number of days in the given year of termination, except that there shall be no proration for the amount of the termination payment that is attributable to the ITC/U.S. Treasury grant recapture, or any other tax benefits, if applicable. The termination payment will be further reduced by the amount of Net-Operating Income (“NOI”) in the appropriate termination year, calculated by the sum of any payments made by Host to Owner in the termination year, less any demonstrable operations and maintenance expenses incurred by Owner in the termination year.

Exhibit E

Insurance Requirements

GENERAL LIABILITY

1. Requirements Applicable to Owner. Owner shall maintain during the Term of this PPA (or any extensions thereof), the insurance coverage outlined below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to the other party and Owner's Financing Parties on an annual basis, prior to each renewal date, via a Certificate of Insurance as specified below.

All Insurance Carriers will be rated A- VIII or better by A.M. Best Company:

- a. Commercial General Liability with limits of:
 - i. \$1,000,000 per occurrence for 3rd Party Bodily Injury & Property Damage
 - ii. \$1,000,000 per occurrence for Products Completed Operations
 - iii. \$2,000,000 General Aggregate
 - iv. Coverage to be written on an Occurrence form basis, including (1) Broad Form Contractual Liability and (2) provisions for severability of interest
 - v. Owner shall include Host Customer and Owner's Financing Parties as Additional Insureds with respect to the insurance required under this PPA. The Additional Insured shall be on ISO forms CG 20 11 07 04 and 20 37 97 04 or equivalent.
 - vi. Any other insurance required for financing of the SEF, including flood insurance.
 - vii. The policy should provide that the coverage is Primary and Non-Contributory with any other available insurance of the other party and/or of Owner's Financing Parties.
 - viii. Owner will provide Host Customer with 30 days advance notice of cancellation or non-renewal (10 days for non-payment of premium).
 - b. Automobile Liability with limits of:
 - i. not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence.
 - ii. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work.
- c. Excess/Umbrella Liability Policy with minimum limits of:
 - i. \$4,000,000 per occurrence for 3rd Party Bodily Injury and Property Damage
 - ii. \$4,000,000 General Aggregate - other than Products/Completed Operations
 - iii. Coverage terms and limits to apply excess of the primary per occurrence and/or aggregate limits provided for in the Commercial General Liability, Auto Liability and Employers' Liability coverage.
- d. Workers' Compensation/Employers Liability limits as follows:
 - i. Workers' Compensation – Statutory Coverage.
 - ii. Employers Liability
 1. Bodily Injury by accident \$1,000,000 each accident
 2. Bodily Injury by disease \$1,000,000 each employee
 3. Bodily Injury policy limit \$1,000,000 policy limit
 - iii. Policy shall include a blanket endorsement that provides a Waiver of Subrogation in favor of Owner and Owner's Financing Parties.

2. Requirements Applicable to Host Customer. Host Customer shall maintain general liability insurance in the amounts indicated above, or the maximum amount permitted under the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-30 NMSA 1978, whichever amount is less.

EXHIBIT F

ENERGY PAYMENT RATE

Contract Year	Energy Payment Rate (\$/kWh)	Energy Payment Rate Increase Factor
1	\$0.0775	1.50%
2	\$0.0787	1.50%
3	\$0.0798	1.50%
4	\$0.0810	1.50%
5	\$0.0823	1.50%
6	\$0.0835	1.50%
7	\$0.0847	1.50%
8	\$0.0860	1.50%
9	\$0.0873	1.50%
10	\$0.0886	1.50%
11	\$0.0899	1.50%
12	\$0.0913	1.50%
13	\$0.0927	1.50%
14	\$0.0941	1.50%
15	\$0.0955	1.50%
16	\$0.0969	1.50%
17	\$0.0983	1.50%
18	\$0.0998	1.50%
19	\$0.1013	1.50%
20	\$0.1028	1.50%
21	\$0.1044	1.50%
22	\$0.1059	1.50%
23	\$0.1075	1.50%
24	\$0.1091	1.50%
25	\$0.1108	1.50%

Annual Price Escalator: Each Contract Year during the term of the PPA, the Energy Payment Rate shall be adjusted upward by the Energy Payment Rate Increase Factor listed above in this Exhibit B-1 (I)

EXHIBIT G

Form of Consent to Collateral Assignment (Power Purchase Agreement/Site Agreement)

This CONSENT AND AGREEMENT (this “Consent”), dated as of [____], [____], is entered into by and among The Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico (together with its successors and permitted assigns, “Host Customer”), [if applicable _____], in its capacity as collateral agent (together with its successors, designees and assigns in such capacity, the “Collateral Agent”) for the Secured Parties referred to below, Affordable Solar Installation, Inc, a New Mexico Corporation (“Company”).

RECITALS

A. Company is developing or has developed and is causing or has caused the construction of an approximately [*Insert kw for applicable Project*] kW solar electric facility located at [*Insert address of applicable Project*] in the State of [____], known as [*Insert name of applicable Project*] (the “Project”).

B. In order to partially finance, among other things, the completion of construction of the Project, and to fund other operating expenses for the Project, Company and certain of its affiliates have entered into that certain Amended and Restated Credit and Guaranty Agreement, dated as of [____], with the Collateral Agent and the lenders and other agents and arrangers from time to time party thereto (as amended, amended and restated, modified or supplemented from time to time, the “Credit Agreement”).

C. Host Customer and Company are parties to each of (i) that certain [*Insert description of relevant Power Purchase Agreement*], dated as of [____] [____], [____] [*List any current amendments*] (as [**further**] amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”) and (ii) that certain [*Insert description of relevant Lease Agreement*], dated as of [____] [____], [____] [*List any current amendments*] (as [**further**] amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Lease” and, together with the PPA, the “Contracts”), copies of which are attached hereto as Exhibit A.

D. In connection with the financing arrangements under the Credit Agreement, (i) as of the date hereof, [____] owns the Project and is party to the Contracts (as assignee of DevCo), (ii) [____] may from time to time assign all of its right, title and interest in and to the Contracts, along with certain assets and other contracts and agreements related thereto, to [____], or one or more other affiliates of Company; (iii) [____] may assign all of its right, title and interest in and to the Contracts to [____]; (iv) [____] may collaterally assign all of its right, title and interest in and to the Contracts as security for its obligations under a leasing arrangement between [____] and [____]; and (v) one or more Company affiliates that may from time to time be a counterparty to the Contracts as described above, including [____], may from time to time collaterally assign, as security for its obligations under the Credit Agreement, all of its assets, including the contractual and collateral interests described above, to the Collateral Agent for the benefit of itself and the lenders and other secured parties under the Credit Agreement (collectively, the “Secured Parties”). The assignments referred to in clauses (ii) and (iii) above, together with the assignment of the Contracts from DevCo to [____] and any subsequent assignment from any such assignee back to any one or more of the prior assignors identified above, are referred to herein as the “Permitted Assignments”, and the collateral assignments referred to in clauses (iv) and (v) above are referred to herein as the “Collateral Assignments”.

E. Host Customer may issue an industrial revenue bond to assist the Company in the financing of the Project, pursuant to which the Company has agreed that the Project (denominated under the IRB documentation the "Project Property") may be assigned to a third party only if such assignment does not result in the Project failing to constitute a "project" within the meaning of the New Mexico Industrial Revenue Bond statutes, Sections 3-32-1 through 3-32-16 NMSA 1978.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Contracts to the contrary, as follows:

SECTION 1. CONSENT TO ASSIGNMENT

Host Customer, acknowledges the Credit Agreement and the Permitted Assignments and Collateral Assignments referred to in Recital D above, consents to such Permitted Assignments and Collateral Assignments (including, without limitation, the assignment of all of Company's rights to receive payments under or with respect to the Contracts, whether as contractual obligations, damages, indemnity payments or otherwise), and agrees with Company and the Collateral Agent for the benefit of the Secured Parties, as follows:

(a) The Collateral Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Company under the Contracts. Upon receipt of notice from the Collateral Agent, Host Customer agrees to accept such exercise and cure and to render to the curing party all performance due by Host Customer to Company under the Contracts and this Consent.

(b) Host Customer agrees to deliver duplicates or copies of all notices of default and any other material notices delivered by Host Customer under or pursuant to the Contracts to the Collateral Agent simultaneously with delivery thereof to Company under the Contracts.

(c) Host Customer will not, without the prior written consent of the Collateral Agent (such consent not to be unreasonably withheld), (i) subject to Section 1(d) below, cancel or terminate the Contracts, or consent to or accept any cancellation, termination or suspension thereof by Company, (ii) subject to Section 1(d) and except as provided in the Contracts, suspend performance of its obligations thereunder, (iii) except as provided in the Contracts, sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contracts, or (iv) amend or modify the Contracts.

(d) Host Customer will not terminate any Contract on account of any default or breach of Company thereunder without written notice to the Collateral Agent and Company and first providing to the Collateral Agent (i) thirty (30) days from the date notice of default or breach is delivered to the Collateral Agent and Company to cure such default if such default is the failure to pay amounts to Host Customer which are due and payable by Company under such Contract or (ii) a reasonable opportunity, but not fewer than ninety (90) days, to cure such breach or default if the breach or default cannot be cured by the payment of money to Host Customer so long as the Collateral Agent shall have commenced to cure the breach or default within such ninety (90)-day period and thereafter diligently pursues such cure to completion and continues to perform any monetary obligations under such Contract, and all other obligations under such Contract are performed by Company or the Collateral Agent; provided that, in connection a failure by Company or any assignee to provide or

maintain in full force and effect any required insurance, if such failure is not remedied within thirty (30) days after receipt of written notice from Host Customer, Host Customer may exercise its right to terminate the Contract or Contracts. If possession of the Project is necessary to cure such breach or default, and the Collateral Agent declares Company in default and commences foreclosure proceedings, the Collateral Agent will be allowed a reasonable period to complete such proceedings. If the Collateral Agent is prohibited by any court order or bankruptcy or insolvency proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition.

(e) Host Customer consents to the transfer of interest in the Contracts pursuant to or in connection with the Collateral Assignments, including a transfer of Company's interest under the Contracts to the Collateral Agent, or any transfer by any beneficiary, assignee or designee under a Collateral Assignment or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Company in lieu of foreclosure, and agrees that upon such foreclosure, sale or conveyance, Host Customer shall recognize the Collateral Agent or any other purchaser or grantee as the applicable party under the Contracts (provided that such Collateral Agent or purchaser or grantee assumes the obligations of Company under the Contracts). Host Customer agrees that if the Collateral Agent shall notify Host Customer that it is exercising remedies under or in connection with the Credit Agreement, the Collateral Agent shall be substituted at the Collateral Agent's request for Company under each Contract and, in such an event, and provided, that the Collateral Agent shall have assumed all Company's obligations under the PPA, Host Customer will continue to perform under the Contracts in favor of the Collateral Agent; In the event that any Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if any Contract is terminated for any reason other than a default which could have been but was not cured as provided in Section 1(d) above (including in the event Host Customer bids for and purchases (or causes another person to bid for and purchase) any Contract in any foreclosure, bankruptcy, insolvency or similar proceeding), and if, within forty-five (45) days after such rejection or termination, the Collateral Agent shall so request, Host Customer will execute and deliver to the Collateral Agent a new contract, which contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination.

(f) In the event that the Collateral Agent elects to perform Company's obligations under the Contracts as provided in Section 1(d) above or to enter into a new contract as provided in Section 1(e) above, the Collateral Agent's liability to Host Customer for the performance of such obligations and Host Customer's recourse for enforcement thereof shall be limited to the Collateral Agent's interest in the Project and shall exclude any liability for acts or omissions of Company or any other predecessor of such party's interest in such Contract that arose prior to the assumption by such party of its interest in the Project and such Contract; provided, that Company shall not be relieved of its obligations as a result of such assumption.

(g) In the event that the Collateral Agent assumes Company's right, title, interest and obligations under the Contracts, the Collateral Agent shall cure any then-existing payment and performance defaults under the Contracts, except any performance defaults which by their nature are not capable of being cured. The Collateral Agent shall have the right to assign its interest in the Contracts or the new contract entered into pursuant to Section 1(f) above to a person or entity to whom the Project is transferred, provided such transferee assumes the obligations of Company (or the Collateral Agent, as applicable) under the Contracts which arise from and after the date of such assignment. Upon such assignment, the Collateral Agent shall be released from any further liability thereunder.

(h) The assignment and assumption of the Company's rights and obligations

under the PPA shall be valid hereunder only if such assignment does not result in the Project failing to constitute a "project" within the meaning of the New Mexico Industrial Revenue Bond statutes, Sections 3-32-1 through 3-32-16 NMSA 1978.

SECTION 2. REPRESENTATIONS AND WARRANTIES

Host Customer hereby represents and warrants that:

(a) Host Customer (i) is a [_____] duly [formed][organized] and validly existing under the laws of the State of [_____] , (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Contracts and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Contracts, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance by Host Customer of this Consent and the Contracts have been duly authorized by all necessary corporate or other action on the part of Host Customer and, except as set forth on Schedule 1(b), do not require any approvals, filings with, or consents of any entity or person (including interconnection requests and agreements with the applicable interconnection utility for the Project) which have not previously been obtained or made; all of the approvals, filings, agreements and consents listed on Schedule 1(b) are of a type that are routinely granted on application and that would not normally be obtained at the current stage of development of the Project and performance of the parties' respective obligations under the Contracts, and Host Customer has no reason to believe that any such approval, filing or consent will not be obtained in a timely manner consistent with the requirements of the Contracts;

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

(d) there is no litigation, action, suit, proceeding or investigation pending or (to the best of Host Customer's knowledge) threatened against Host Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Host Customer of its obligations hereunder or under the Contracts, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Host Customer or (iii) questions the validity, binding effect or enforceability hereof or of the Contracts, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(e) the execution, delivery and performance by Host Customer of this Consent and the Contracts, 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 license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it;

(f) the Contracts and this Consent are the only agreements between Company and Host Customer with respect to the Project, all of the conditions precedent to effectiveness under the Contracts have been satisfied or waived and, to the best knowledge of Host Customer, no default has occurred and is continuing under any Contract; and

(g) attached hereto as Exhibit A is a true, correct and complete copy of each of the Contracts, including all amendments, modifications, supplements and waivers with respect thereto as of the date hereof.

Each of the representations and warranties set forth in this Section 2 shall survive the execution and delivery of this Consent and the Contracts and the consummation of the transactions contemplated hereby and thereby.

SECTION 3. PAYMENTS UNDER THE CONTRACTS. Host Customer will pay all amounts payable by it under the Contracts from and after the date hereof in lawful money of the United States, directly to the Collateral Agent for deposit to [____], Account No. [____] at [____] (ABA#: [____]) or at such other person or entity and/or at such other address as the Collateral Agent may from time to time specify in writing to Host Customer. Host Customer shall not, without the prior written consent of the Collateral Agent, make any payments to or for the benefit of Company other than as contemplated pursuant to the first sentence of this Section 3.

SECTION 4. ***[Insert the following only if applicable: STIPULATIONS AND MODIFICATIONS.*** Notwithstanding any provision contained in the Contracts to the contrary, Host Customer and Company acknowledge and agree to the following amendments, supplements, modifications or clarifications, as the case may be, to the Contracts:

(a) ***[Additional provisions to be added upon completion of due diligence review of the Contracts]***

SECTION 5. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or two (2) Banking Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Host Customer:

[____]
[____]
[____]
Telephone No.: [____]
Telecopy No.: [____]
Attn: [____]

If to the Collateral Agent:

[____]
[____]
[____]

Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

If to Company:

[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

SECTION 6. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Credit Agreement). Host Customer agrees (a) to confirm such continuing obligation in writing upon the reasonable request of Company and the Collateral Agent for the benefit of the Secured Parties or any of their respective successors, transferees or assigns and (b) to cause any successor-in-interest to Host Customer with respect to its interest in the Contracts to assume, in writing in form and substance reasonably satisfactory to the Collateral Agent, the obligations of Host Customer hereunder. Any purported assignment or transfer of the Contracts not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. Notwithstanding anything to the contrary contained herein or in the Contracts, if the Collateral Agent elects to exercise any of its rights or remedies under this Consent or take any other action provided herein, then the Collateral Agent may exercise such rights or remedies or take such other actions through any assignee, designee or successor. To the extent any security interest in any Contract has been granted by [_____] to [_____], [_____] hereby appoints the Collateral Agent as its designee to exercise any and all rights and remedies of [_____] under or with respect to such Contract, , whether direct or by way of collateral assignment and exercise of remedies in respect thereof, and Host Customer shall, upon written demand therefor by the Collateral Agent, render to the Collateral Agent all of such rights and remedies as may be due and owing to [_____]. In addition, any actions taken by Company at any time when Company is under the control of the Collateral Agent shall be deemed to be actions taken by the Collateral Agent for purposes of this Consent, and the Collateral Agent may at any time elect to exercise any of its rights or remedies under this Consent or take any other action provided herein in such manner. No termination, amendment or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto, and no waiver of any such provision shall be effective unless in writing and signed by the waiving party. This Consent shall be governed by, and construed under, the laws of the State of New Mexico without regard to conflicts of law principles that would result in the application of any law other than the law of the State of New Mexico.

SECTION 7. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 8. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby, and the parties hereto shall negotiate in good faith to replace such invalid, illegal or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

[Signature block and exhibits intentionally excluded]

EXHIBIT G-2

Form of Consent to Consent and Agreement re: Assignments (Power Purchase Agreement/Site Lease Agreement)

CONSENT AND AGREEMENT RE ASSIGNMENTS (POWER PURCHASE AGREEMENT/SITE LEASE AGREEMENT)

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, is entered into by and among The Albuquerque Bernalillo County Water Utility Authority ("Host Customer") and _____ ("Lessee"), for the benefit of _____ ("Lessor") in connection with (a) that certain Master Purchase and Sale Agreement, dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Master Purchase Agreement"), between Lessor and Lessee, pursuant to which Lessee has agreed to sell to Lessor certain photovoltaic solar energy equipment (the "Equipment"), and (b) that certain Master Lease Agreement, dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Master Lease Agreement"), between Lessor and Lessee, pursuant to which Lessor agreed to lease the Equipment back to Lessee.

RECITALS

A. Host Customer and Lessee (by assignment) are parties to each of (i) that certain Power Purchase Agreement, dated as of _____ and as further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "PPA"), (ii) that certain Lease Agreement, dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Site Lease" and, together with the PPA, the "Assigned Agreements"), copies of which are attached hereto as Exhibit A.

B. Lessee acquired its ownership interest in the Assigned Agreements, the SEF Assets (as defined in the PPA) and other related assets, and a security interest in the Pledged Utility Cost Savings Revenue Account created thereunder (the "PPA Account"), which security interests in the PPA Accounts are expressly limited to an amount not to exceed \$_____ per month as provided in Section 10.6(b)(i) of the PPA, pursuant to that certain Asset Purchase Agreement, dated as of _____ (the "APA"), by and between Lessee, as buyer, and Affordable Solar Installation, Inc., as seller ("ASI").

C. In connection with the absolute sale and leaseback of the Equipment by Lessee to Lessor pursuant to the Master Purchase Agreement and the Master Lease Agreement, respectively, Lessee has assigned or will assign to Lessor pursuant to an Assignment Agreement between Lessee and Lessor, dated on or about _____, (the "Assignment Agreement") all of its right, title and interest in, to and under the Assigned Agreements, along with its right in certain related assets (including the PPA Accounts) and other contracts and agreements related thereto, as security for Lessee's obligations under the Master Purchase Agreement and the Master Lease Agreement (all such assigned rights, the "Assigned Rights").

D. Pursuant to the Master Lease Agreement, Lessee has also agreed

to deposit all revenues its receives with respect to the Equipment and under the Assigned Agreements into a lockbox account designated by Lessor and as further described on Schedule I hereto (the “Lockbox Account”).

E. Host Customer is willing to (a) acknowledge notice of (i) the assignments from ASI to Lessee pursuant to the APA, (ii) the sale of the Equipment by Lessee to Lessor, (iii) the collateral assignment of the Assigned Agreements and the grant of a security interest in the Assigned Rights by Lessee in favor of Lessor and (iv) Lessee’s direction to Host Customer to remit payments to the Lockbox Account and (b) agree to such other terms as are described herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Assigned Agreements to the contrary, as follows:

SECTION 2. CONSENT TO ASSIGNMENT

Lessee hereby notifies Host Customer that is has purchased and absolutely acquired all legal and beneficial ownership of, among other things, the SEF Assets, the PPA, the Site Lease and the security interest in the PPA Accounts from ASI, and has assumed the obligations of ASI under the PPA and Site Lease, pursuant to the terms of the APA. Lessee hereby notifies Host Customer that it has absolutely sold and assigned all legal and beneficial ownership of the Equipment (including all attributes and proceeds associated with the Equipment) included in the SEF Assets to Lessor and, as security for the due and punctual performance and payment of all of Lessee’s obligations under the Master Purchase Agreement and the Master Lease Agreement, has assigned or will assign to Lessor as collateral security for its obligations under the Master Lease Agreement, the Assigned Rights upon the terms set forth in the Assignment Agreement. In connection with such notice, Host Customer acknowledges and agrees with Lessor and Lessee, as follows:

(b) Host Customer acknowledges receipt of notices of the assignments specified in this Section 1 and in the Recitals hereto and hereby consents to each of the foregoing assignments. Host further agrees that Lessor shall have all the rights of a “Provider’s Financing Party” set forth in Section 16 of the PPA, including the right to rely on all representations, warranties, indemnities and agreements made by Host Customer under or pursuant to the PPA and the right to enforce the Assigned Agreements as an intended third party beneficiary thereof.

(c) Lessor shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Lessee under the Assigned Agreements. Upon receipt of notice from the Lessor, Host Customer agrees to accept such exercise and cure and to render to the curing party all performance due by Host Customer to Lessee under the Assigned Agreements and this Consent.

(d) Host Customer agrees to deliver duplicates or copies of all notices of default under Section 9.1 of the PPA and any other material notices delivered by Host Customer under or pursuant to the Assigned Agreements to the Lessor simultaneously with delivery thereof to Lessee under the Assigned Agreements.

(e) Host Customer will not, without the prior written consent of the Lessor, (i) subject to Section 1(e) below, cancel or terminate the Assigned Agreements, or consent to or accept any cancellation, termination or suspension thereof by Lessee, (ii) subject to Section 1(e) and except

as provided in the Assigned Agreements, suspend performance of its obligations thereunder, (iii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Assigned Agreements, or (iv) amend or modify the Assigned Agreements.

(f) Host Customer will not terminate any Assigned Agreement on account of any default or breach by Lessee thereunder without giving written notice to Lessor and Lessee of its intent to do so and first providing to Lessor a reasonable opportunity, not to exceed 90 days, to cure such breach or default. So long as Lessor gives Host Customer prompt written notice of its intent to cure or cause such breach or default to be cured by Lessee or Lessor's designee, and then promptly commences to cure and thereafter diligently pursues such cure to completion (and continues to perform or cause to be performed any monetary or other obligations of Lessee under the Assigned Agreement), such reasonable opportunity to cure shall continue for a minimum of thirty (30) days in the case the case of a default in payment or maintenance of insurance or ninety (90) days in the case of any other default. If the Lessor is prohibited by any court order or bankruptcy or insolvency proceedings from curing the default, the foregoing time periods shall be extended for a reasonable period to be mutually agreed by Lessor and Host Customer.

(g) Host Customer hereby consents to any subsequent transfer of Lessor's interest in the Assigned Agreements made pursuant to or in connection with a future foreclosure, assignment in-lieu of foreclosure or other exercise of remedies by Lessor against Lessee under the Master Lease or the Assignment Agreement. Host Customer further agrees that if the Lessor notifies Host Customer in writing that it is exercising remedies under or in connection with the Assignment Agreement that Host Customer will recognize Lessor and/or its designee or assignee as the substituted counterparty under the Assigned Agreements and will continue to perform under the Assigned Agreements so long as (i) Lessor or its designee or assignee assumes in writing the obligations of Lessee under the Assigned Agreements and (ii) if Lessor appoints a designee or arranges for an assignee to assume such obligations, such person either (A) has at least three years prior experience providing operations, maintenance and administrative services for commercial solar facilities located in the United States and similar to the SEF Assets or (B) has, in the reasonable determination of Lessor, prior experience operating solar facilities similar to the SEF Assets that is at least equivalent to that of Lessee and its parent and a tangible net worth that is at least equal to that of Lessee and its parent as of the date hereof. In the event that any Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if any Assigned Agreement is terminated for any reason other than a default which could have been but was not cured as provided in Section 1(e) above (including in the event Host Customer bids for and purchases (or causes another person to bid for and purchase) any Assigned Agreement in any foreclosure, bankruptcy, insolvency or similar proceeding), and if, within forty-five (45) days after such rejection or termination, the Lessor shall so request, Host Customer will execute and deliver to the Lessor a new contract, which contract shall be on the same terms and conditions as the original Assigned Agreement for the remaining term of the original Assigned Agreement before giving effect to such termination.

(h) In the event that the Lessor elects to perform or cause to be performed Lessee's obligations under the Assigned Agreements as provided in Section 1(e) or 1(f) above or to enter into a new contract as provided in Section 1(f) above, the Lessor's liability to Host Customer for the performance of such obligations and Host Customer's recourse for enforcement thereof shall be limited to the Lessor's interest in the Equipment and shall exclude any liability for acts or omissions of Lessee or any other predecessor of such party's interest in such Assigned Agreement that arose prior to the assumption by such party of its interest in the Equipment and such Assigned Agreement; provided, that Lessee shall not be relieved of its obligations as a result of such assumption.

(i) In the event that the Lessor assumes or causes to be assumed Lessee's right,

title, interest and obligations under the Assigned Agreements as provided in Section 1(e) above, the Lessor shall cure any then-existing payment and performance defaults under the Assigned Agreements, except any performance defaults which by their nature are not capable of being cured. The Lessor shall have the right to assign its interest in the Assigned Agreements or the new contract entered into pursuant to Section 1(f) above to a person or entity to whom the Equipment is transferred, provided such transferee assumes the obligations of Lessee (or the Lessor, as applicable) under the Assigned Agreements which arise from and after the date of such assignment. Upon such assignment, the Lessor shall be released from any further liability thereunder.

(j) Except as expressly stated in this Section 1, nothing herein shall be construed as diminishing Host Customer's rights under the PPA.

SECTION 2. REPRESENTATIONS AND WARRANTIES

Host Customer hereby represents and warrants that:

(h) Host Customer (i) is a political subdivision of the State of New Mexico duly organized and validly existing under the laws of the State of New Mexico, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreements and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreements, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(i) the execution, delivery and performance by Host Customer of this Consent and the Assigned Agreements have been duly authorized by all necessary corporate or other action on the part of Host Customer and do not require any approvals, filings with, or consents of any entity or person (including interconnection requests and agreements with the applicable interconnection utility for the Equipment) which have not previously been obtained or made;

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

(k) there is no litigation, action, suit, proceeding or investigation pending or (to the best of Host Customer's knowledge) threatened against Host Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Host Customer of its obligations hereunder or under the Assigned Agreements, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Host Customer or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreements, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(l) the execution, delivery and performance by Host Customer of this Consent and the Assigned Agreements, 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 license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it;

(m) the Assigned Agreements and this Consent are the only agreements between Lessee and Host Customer with respect to the Project, all of the conditions precedent to effectiveness under the Assigned Agreements have been satisfied or waived and, to the best knowledge of Host Customer, no default has occurred and is continuing under any Assigned Agreement;

(n) attached hereto as Exhibit A is a true, correct and complete copy of each of the Assigned Agreements, including all amendments, modifications, supplements and waivers with respect thereto as of the date hereof;

(o) there has been no referendum called pursuant to Section 3-54-1 NMSA regarding the Site Lease and the time period during which any such referendum could be called has expired.

Each of the representations and warranties set forth in this Section 2 shall survive the execution and delivery of this Consent and the Assigned Agreements and the consummation of the transactions contemplated hereby and thereby.

SECTION 3. PAYMENTS UNDER THE CONTRACTS. Host Customer agrees that, until the termination or expiration of this Consent pursuant to Section 5, Host Customer shall pay all amounts payable by it under the Assigned Agreements from and after the date hereof in lawful money of the United States, directly to the Lockbox Account or at such other person or entity and/or at such other address as the Lessor may from time to time specify in writing to Host Customer. Host Customer shall not, without the prior written consent of the Lessor, make any payments to or for the benefit of Lessee other than as contemplated pursuant to the first sentence of this Section 3.

SECTION 4. STIPULATIONS AND MODIFICATIONS

(a) Host Customer hereby waives any requirement under the PPA that Lessee continue to be the owner of the Equipment; and

(b) Host Customer acknowledges that it has granted a security interest in the PPA Accounts and the revenues deposited therein or credited thereto to ASI, which security interest was assigned to and is now held by Lessee and Host Customer further agrees that pursuant to Assignment Agreement, Lessor now holds the security interest in the PPA Accounts and the revenues deposited therein or credited thereto.

SECTION 5. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days (as such term is defined in the PPA) after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Host Customer:

Albuquerque Bernalillo

One Civic Plaza NW
Room 5012
Albuquerque, NM 87106

Attn: _____

If to the Lessor:

If to Lessee:

SECTION 6. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors, transferees and assigns. Host Customer (a) agrees to confirm such continuing obligation in writing upon the reasonable request of Lessee and the Lessor for the benefit of the Secured Parties or any of their respective successors, transferees or assigns and (b) to cause any successor-in-interest to Host Customer with respect to its interests under the Assigned Agreements to assume, in writing in form and substance reasonably satisfactory to Lessor, the obligations of Host Customer hereunder. Host Customer shall not assign its rights or obligations under any of the Assigned Agreements without the express written consent of the Lessor, which consent will not be unreasonably withheld or delayed so long as the assignee is of equivalent or better credit standing and passes all required "know your customer" checks required by Lessor under applicable law. Notwithstanding anything to the contrary contained herein or in the Assigned Agreements, if the Lessor elects to exercise any of its rights or remedies under this Consent or take any other action provided herein, then the Lessor may exercise such rights or remedies or take such other actions through any assignee, designee or successor. To the extent any security interest in any Assigned Agreement has been granted by Lessee to Lessor, Lessee hereby appoints the Lessor as its designee to exercise any and all rights and remedies of Lessee under or with respect to such Assigned Agreement, whether direct or by way of collateral assignment and exercise of remedies in respect thereof, and Host Customer shall, upon written demand therefore by the Lessor, render to the Lessor all of such rights and remedies as may be due and owing to Lessee. Lessor shall be an express beneficiary of Sections 16.2 of the PPA and shall have the right to enforce all rights provided for its benefit thereunder against any party hereto. No termination, amendment or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto and Lessor, and no waiver of any such provision shall be effective unless in writing and signed by the waiving party and Lessor. The rights of Lessor under this Consent shall terminate upon the earlier of (i) exercise by Lessee of its rights, if any, to repurchase the Equipment in accordance with the Master Lease Agreement and/or (ii) the exercise by Lessor of its right to substitute or cause the substitution for and assumption of Lessee's interest in the Assigned Agreements as provided herein and in the Assigned Agreements. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW MEXICO APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

SECTION 7. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement. Delivery of an executed counterpart

of a signature page of this Consent by facsimile shall be effective as delivery of a manually executed counterpart of this Consent

SECTION 8. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby, and the parties hereto shall negotiate in good faith to replace such invalid, illegal or unenforceable provisions.

SECTION 9. FURTHER ASSURANCES

Host Customer will from time to time, upon the written request of Lessor, execute and deliver such further documents and do such other acts and things as Lessor may reasonably request in order to effectuate more fully the purposes of this Consent and Section 16 of the PPA.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent and Agreement re Assignments as of the date first set forth above.

Accepted:

[Insert name of Assignee]

By: _____

Name: _____

Title: _____

EXHIBIT G-2

**Form of Consent to Consent and Agreement re: Assignments
(Power Purchase Agreement/Site Lease Agreement)**

SCHEDULE I - Lockbox Account Information

Bank:

Account Name:

Account #:

ABA #:

Lockbox Address:

EXHIBIT G-2

**Form of Consent to Consent and Agreement re: Assignments
(Power Purchase Agreement/Site Lease Agreement)**

EXHIBIT A to Consent and Agreement re: Assignment

[attach Assigned Agreements]

Exhibit H
Form of Written Guarantee

Definitions.

“Actual Annual Cost of the Energy Conservation Measure” means the Actual Energy Output multiplied by Energy Payment rate, for each contract year.

“Actual Annual Energy Output” means, for each Contract Year, the Energy Output produced by the SEF in kWh as measured by the Metering Device and recorded by DAS for such Contract Year, plus any kWh that are estimated to have been lost for that Contract Year due to a Force Majeure Event or Host Customer Event.

“Actual Annual Savings” means, the Actual Annual Utility Savings less Actual Annual Cost of the Energy Conservation Measure.

“Actual Annual Utility Cost Savings” shall mean, for each Contract Year, the Replacement Energy Incremental Cost multiplied by the Actual Energy Output.

“Adjusted Annual Savings” shall mean, for each Contract Year, the Actual Annual Savings plus any Savings Credit Balance.

“Annual Savings Guaranty Amount” for the given Contract Year, shall mean the Estimated Annual Utility Savings minus the Estimated Annual Cost of the Energy Conservation Measure, or \$100, whichever number is less.

“Energy Conservation Measure” means kWh produced by the SEF to be sold by Owner to Host Customer.

“Energy Payment Rate” shall have the meaning ascribed to it in Section 4.3 of the PPA.

“Estimated Annual Cost of the Energy Conservation Measure” -means the Estimated Annual Energy Output for each contract year, measured in kWh, multiplied by the Energy Payment Rate, for Each Contract Year.

“Estimated Annual Energy Output” shall have the meaning described in Exhibit F “PPA Production Guarantee”.

“Estimated Annual Utility Cost Savings” means the Estimated Annual Energy Output for each contract year, measured in kWh multiplied by the Replacement Energy Incremental Costs, for each Contract Year.

“DAS” means the data acquisition system, including but not limited to a meteorological system, production meter and data logger. The DAS measures and logs the following five parameters on a 15-minute average basis at the Property: (1) actual AC electricity production of the SEF (in kWh); (2) solar insolation measured in the global horizontal plane (in kWh/m²); (3) ambient air temperature; (4) cell temperature; and (5) wind speed.

“Host Customer Event” shall mean loss or reduction of Energy Output caused by actions or inaction of Host Customer or Utility.

“kWh” means electric energy expressed in kilowatt-hours and measured by multiplying the amount of electric power delivered (measured in kilowatts) by the amount of time over which the electricity was consumed (measured in hours). One-kilowatt hour equals one thousand watt-hours.

“Replacement Energy Incremental Cost” shall mean the estimated costs of replacement energy, on per kWh basis, for such Contract Year, as outlined Exhibit I-1.

“Savings Credit Balance” shall mean the sum of any unused Savings Credits.

“Savings Credit Difference” shall mean, for each Contract Year, the amount by which the Actual Annual Savings exceeds the Annual Savings Guarantee Amount for such Contract Year.

“Savings Credits” shall mean, for each Contract Year, any positive Savings Credit Difference.

“Savings Guaranty Difference” shall mean, for each Contract Year, the amount of savings by which (i) Adjusted Annual Savings for such Contract Year exceeds or is less than (ii) the Annual Savings Guaranty Amount for such Contract Year.

Guarantee

- a. Owner hereby guarantees that the Actual Annual Savings Amount will equal or exceed the Annual Savings Guarantee Amount.
- b. Within twenty (20) Business Days of the end of each Contract Year, Owner shall provide Host Customer with a written report setting forth a good faith calculation of the Savings Credit Difference for such Contract Year.
- c. If the Savings Guaranty Difference for such Contract Year results in a negative number, Owner shall be deemed not to have satisfied the Annual Savings Guaranty Level for such Contract Year and shall credit towards future energy payment obligations of Host Customer pursuant to Article 10 of the PPA, or at Owner’s option shall pay in cash to the Pledged Utility Cost Savings Account, an amount in US Dollars equal to the Savings Guaranty Difference.
- d. Owner and Host Customer agree that the Replacement Energy Incremental Cost is equal to the annual figures found in Exhibit I-1 for both arrays. These assumptions reflect Host Customer’s current cost of electricity, peak usage, meter configuration (transformer), tariff structure, and anticipated annual utility cost increases of 2%. Owner shall not be responsible for lower or negative savings on an annual or cumulative basis if actual utility costs, meter configuration or anticipated annual utility cost increases of 2% differ from those assumed conditions as described in this Guarantee.

EXHIBIT I

PPA ENERGY PRODUCTION GUARANTEE

Definitions.

“Actual Annual Energy Output” means, for each Contract Year, the Energy Output produced by the SEF in kWh as measured by the Metering Device and recorded by DAS for such Contract Year, plus any kWh that are estimated to have been lost for that Contract Year due to a Force Majeure Event or Host Customer Event.

“Adjusted Actual Annual Energy Output” shall mean, for each Contract Year, the Actual Annual Energy Output plus any Performance Credit Balance.

“Annual Output Guaranty Level” for the given Contract Year is eighty percent (80%) of the Estimated Annual Energy Output.

“DAS” means the data acquisition system, including but not limited to a meteorological system, production meter and data logger. The DAS measures and logs the following four parameters on a 15-minute average basis at the Property: (1) actual AC electricity production of the SEF (in kWh); (2) solar insolation measured in the global horizontal plane (in kWh/m²); (3) ambient air temperature; (4) cell temperature; and (5) wind speed.

“Estimated Annual Energy Output” shall mean, with respect to a given Contract Year, the Energy Output in kWh expected to be produced by the System as described in Exhibit F-2 (i) to this PPA.

“Host Customer Event” shall mean loss or reduction of Energy Output caused by actions or inactions of Host Customer or Utility.

“kWh” means electric energy expressed in kilowatt-hours and measured by multiplying the amount of electric power delivered (measured in kilowatts) by the amount of time over which the electricity was consumed (measured in hours). One kilowatt hour equals one thousand watt-hours.

“Performance Credit Balance” shall mean the sum of any unused Performance Credits.

“Performance Credit Difference” shall mean, for each Contract Year, the number of kWh by which the Actual Annual Energy Output for such Contract Year exceeds the Estimated Annual Energy Output for such Contract Year.

“Performance Credits” shall mean, for each Contract Year, any positive Performance Credit Difference.

“Performance Guaranty Difference” shall mean, for each Contract Year, the number of kWh by which (i) the sum of Adjusted Actual Annual Energy Output for such Contract Year exceeds or falls short of (ii) the Annual Output Guaranty Level for such Contract Year.

“Replacement Energy Incremental Cost” shall have the meaning ascribed to it in Exhibit I.

Energy Production Guaranty.

a. Within twenty (20) Business Days of the end of each Contract Year, Owner shall provide Host Customer with a written report setting forth a good faith calculation of the Performance Guaranty Difference for such Contract Year.

b. If the Performance Guaranty Difference for such Contract Year results in a negative number, Owner shall be deemed not to have satisfied the Annual Output Guaranty Level for such Contract Year and shall credit towards future energy payment obligations of Host Customer pursuant to Article 10 of the PPA, or at Owner's option shall pay in cash to the Pledged Utility Cost Savings Account an amount in US Dollars equal to the product of the absolute value of such Performance Guaranty Difference multiplied by the difference between the Replacement Energy Incremental Cost and the PPA Price in each Contract Year, less any credit already applied under the Savings Guarantee in Exhibit I.

c. If the Performance Guaranty Difference for such Contract Year results in a positive number, Owner shall be deemed to have satisfied the Annual Output Guaranty Level for such Contract Year.

d. If the Performance Credit Difference for any given Contract Year results in a positive number, Owner shall be credited such positive difference as Performance Credits. Such Performance Credits shall be added to the Actual Annual Energy Output when calculating the Performance Guaranty Difference for future Contract Years until such credit has been used and the Performance Credit Balance equals zero (0).

e. Notwithstanding the above, should the SEF be operating at less than 75% capacity (kW size of SEF) for longer than a four-week continuous period due to Owner's failure to perform its maintenance and/or repair responsibilities under Section 6.1 (a) of this PPA, Owner shall credit towards future energy payment obligations, or at Owner's option shall pay in cash to the Pledged Utility Cost Savings Account pursuant to Article 10 of the PPA an amount in US dollars equal to the product of the difference between expected energy production and actual energy production for that period and the Replacement Energy Incremental Cost. In any given year where this provision is exercised, payments made pursuant to this provision shall be subtracted from Performance Credits allocated in that year due to a failure of Owner to meet subsections (a) through (d) of the Production Guarantee.

EXHIBIT I-2 (I)

ESTIMATED AND GUARANTEED ANNUAL ENERGY OUTPUT

Year	System Output (kWh)	Guaranteed Output (kWh)
1	4,066,400	3,253,120
2	4,037,935	3,230,348
3	4,009,670	3,207,736
4	3,981,602	3,185,282
5	3,953,731	3,162,985
6	3,926,055	3,140,844
7	3,898,572	3,118,858
8	3,871,282	3,097,026
9	3,844,183	3,075,346
10	3,817,274	3,053,819
11	3,790,553	3,032,442
12	3,764,019	3,011,215
13	3,737,671	2,990,137
14	3,711,507	2,969,206
15	3,685,527	2,948,422
16	3,659,728	2,927,782
17	3,634,110	2,907,288
18	3,608,671	2,886,937
19	3,583,411	2,866,729
20	3,558,327	2,846,662
21	3,533,418	2,826,734
22	3,508,684	2,806,947
23	3,484,124	2,787,299
24	3,459,735	2,767,788
25	3,435,517	2,748,414

Note: Calculation of the Estimated Annual Energy Output above is based on the September 17th PVSYST V5.57 Report for the proposed SEF, with the assumption of 99% SEF availability. Numbers may be adjusted based on final engineering and independent review.

EXHIBIT J

CONSTRUCTION SCHEDULE

Task	Start Date	Days to Complete	End Date
PPA Negotiation	9/20/15	20	10/10/15
Utility Interconnection Screening	9/17/15	30	10/17/15
Project Financing Secured	10/17/15	10	10/27/15
Engineering and Procurement	10/27/15	45	12/11/15
Site Preparation	12/15/16	60	2/15/16
Facility Construction	2/15/16	120	6/15/16
Inspections and Interconnection	6/15/16	5	6/20/16
Commercial Operation Date	7/1/16	1	7/1/16

***SCHEDULE IS SUBJECT TO CHANGE. THE FULFILLMENT OF THE ABOVE SCHEDULE SHALL NOT BE CONSTRUED TO BE AN OBLIGATION OF OWNER, WHO'S TIMING OBLIGATIONS TO CONSTRUCT ARE DEFINED IN SECTION 2.4.**

EXHIBIT K

OWNER TERMINATION PAYMENT

Contract Year	Termination Value
1	\$16,973
2	\$22,176
3	\$27,535
4	\$33,054
5	\$38,738
6	\$44,591
7	\$50,616
8	\$56,818
9	\$63,201
10	\$69,769
11	\$76,528
12	\$83,482
13	\$90,635
14	\$97,993
15	\$105,561
16	\$113,342
17	\$121,344
18	\$129,571
19	\$138,028
20	\$146,722
21	\$155,657
22	\$164,841
23	\$174,278
24	\$183,975
25	\$193,938

Exhibit L (combined output of Systems A & B)

Savings Guarantee

Rate Schedule	PNM-12B
Replacement Energy Cost	\$0.142
Utility Cost Increase %	2.00%

Contract Year	Estimated Annual Energy Output (kWh)	Replacement Energy Incremental Cost Per kWh	Energy Payment Rate	Estimated Annual Cost Of The Energy Conservation Measure	Estimated Annual Utility Cost Savings	Estimated Annual Savings Amount	Annual Savings Guarantee Amount
1	4,066,400	\$0.1420	\$0.0775	\$315,146	\$577,429	\$262,283	\$1,000
2	4,037,935	\$0.1448	\$0.0787	\$317,634	\$584,855	\$267,220	\$1,000
3	4,009,670	\$0.1477	\$0.0798	\$320,142	\$592,376	\$272,234	\$1,000
4	3,981,602	\$0.1507	\$0.0810	\$322,669	\$599,994	\$277,324	\$1,000
5	3,953,731	\$0.1537	\$0.0823	\$325,217	\$607,710	\$282,493	\$1,000
6	3,926,055	\$0.1568	\$0.0835	\$327,784	\$615,525	\$287,740	\$1,000
7	3,898,572	\$0.1599	\$0.0847	\$330,372	\$623,440	\$293,068	\$1,000
8	3,871,282	\$0.1631	\$0.0860	\$332,981	\$631,458	\$298,477	\$1,000
9	3,844,183	\$0.1664	\$0.0873	\$335,609	\$639,578	\$303,969	\$1,000
10	3,817,274	\$0.1697	\$0.0886	\$338,259	\$647,803	\$309,544	\$1,000
11	3,790,553	\$0.1731	\$0.0899	\$340,930	\$656,134	\$315,205	\$1,000
12	3,764,019	\$0.1766	\$0.0913	\$343,621	\$664,572	\$320,951	\$1,000
13	3,737,671	\$0.1801	\$0.0927	\$346,334	\$673,118	\$326,784	\$1,000
14	3,711,507	\$0.1837	\$0.0941	\$349,068	\$681,775	\$332,706	\$1,000
15	3,685,527	\$0.1874	\$0.0955	\$351,824	\$690,542	\$338,718	\$1,000
16	3,659,728	\$0.1911	\$0.0969	\$354,602	\$699,423	\$344,821	\$1,000
17	3,634,110	\$0.1949	\$0.0983	\$357,402	\$708,417	\$351,016	\$1,000
18	3,608,671	\$0.1988	\$0.0998	\$360,223	\$717,528	\$357,304	\$1,000
19	3,583,411	\$0.2028	\$0.1013	\$363,067	\$726,755	\$363,688	\$1,000
20	3,558,327	\$0.2069	\$0.1028	\$365,934	\$736,101	\$370,167	\$1,000
21	3,533,418	\$0.2110	\$0.1044	\$368,823	\$745,567	\$376,745	\$1,000
22	3,508,684	\$0.2152	\$0.1059	\$371,735	\$755,155	\$383,421	\$1,000
23	3,484,124	\$0.2195	\$0.1075	\$374,669	\$764,867	\$390,197	\$1,000
24	3,459,735	\$0.2239	\$0.1091	\$377,627	\$774,703	\$397,075	\$1,000
25	3,435,517	\$0.2284	\$0.1108	\$380,609	\$784,665	\$404,057	\$1,000

