
Meeting Date: October 17, 2018

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

TITLE: C-18-36 – Approval of Contract with Affordable Solar Installation, Inc. to Finance, Construct, Own, Operate and sell electricity to the Authority from a Solar Energy Facility at the San Juan - Chama Drinking Water Treatment Plant

ACTION: Recommend Approval

Summary:

Requesting approval to delegate authority to the Executive Director to enter into a contract with Affordable Solar Installation, Inc. (Affordable) to finance, construct, own, operate and sell electricity to the 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 Albuquerque Bernalillo County Water Utility Authority (Water Authority) and Affordable to enable Affordable to finance and build a SEF at the WTP in 2018. Affordable will provide the capital to build the SEF, operate and maintain the plant over a 30-year term. The Water Authority will have the option to purchase the facility throughout the term of the agreement. At the end of the 30-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 the electricity from the SEF at a rate of \$0.0535 plus a lump sum payment of \$350,000 per year. Those costs combined yield and energy rate for the WTP of \$.091 per kWh under the current PNM rate at the WTP.

The \$350,000 per year lump sum payment is to be used to offset the PNM renewable energy rider payment agreement the Water Authority has with PNM for generation of renewable energy. This yearly payment will make it efficient and effective to comply with the Water Authorities agreement with PNM, the Renewable Energy Act, and the PRC's order in case No. 15-0166.

The Water Authority's energy rate from the SEF will escalate at a rate of 1.5% per year over the 30-year term. The Water Authority's current PNM rate at the WTP is \$0.1450 per kWh and conservatively projected to increase at an annual rate of 2%. The solar plant is projected to save the Water Authority \$25,400,000 over the 30-year term, an average of \$847,000 per year savings. During the first 12 months of operation the plant is estimated to produce 9.3MWh's, which is approximately 21% of the current 44.7MWh

WTP usage. Adding the new array production to the existing array solar generation onsite will be 31% of the WTP usage. In addition, Affordable will provide the Water Authority real-time, online access to solar production, energy load, and energy savings data.

By entering into this agreement, the Water Authority can be assured of a stable energy rate at the WTP for approximately 21% of the electricity used at the WTP for a 30-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.

In addition to the annual power savings, the installation of this system will provide free covered parking and lighting at all the new field operations and customer services facilities currently planned at WTP as well as some of the existing staff parking areas onsite. The site plan of the covered parking solar array illustrates the layout of these facilities. The new array for which approval is being requested is shown in blue, bottom center of the site plan. The existing array is shown in gray on the right side of the site plan.

FISCAL IMPACT:

There is no additional cost to the Water Authority associated with this contract. We are obligated to spend \$ 350,000 per year towards renewable energy and this agreement provides for that payment to advance a larger scale project. The Water Authority agrees to purchase the electricity produced by Affordable for the contract's 30-year term. There is a provision for the Water Authority to purchase the facility at the end of the 30-year term, but that would require Board approval at that time.

ABNOMA SYSTEM 1B - DESIGN SUMMARY

MAIN FEATURES:
 Nominal AC Power: 2000.00 kWac
 Peak DC Power: 2774.40 kWp
 Module Technology: Mono-Crystalline
 Inverter Topology: 3P String - UL1741
 Estimated Production: 4578 MWh/year

PV MODULES:
 Manufacturer: Jinko
 Model: JKM 420M-72H-V
 Peak Power: 400 Wp (Each)
 Quantity: 6036 Modules

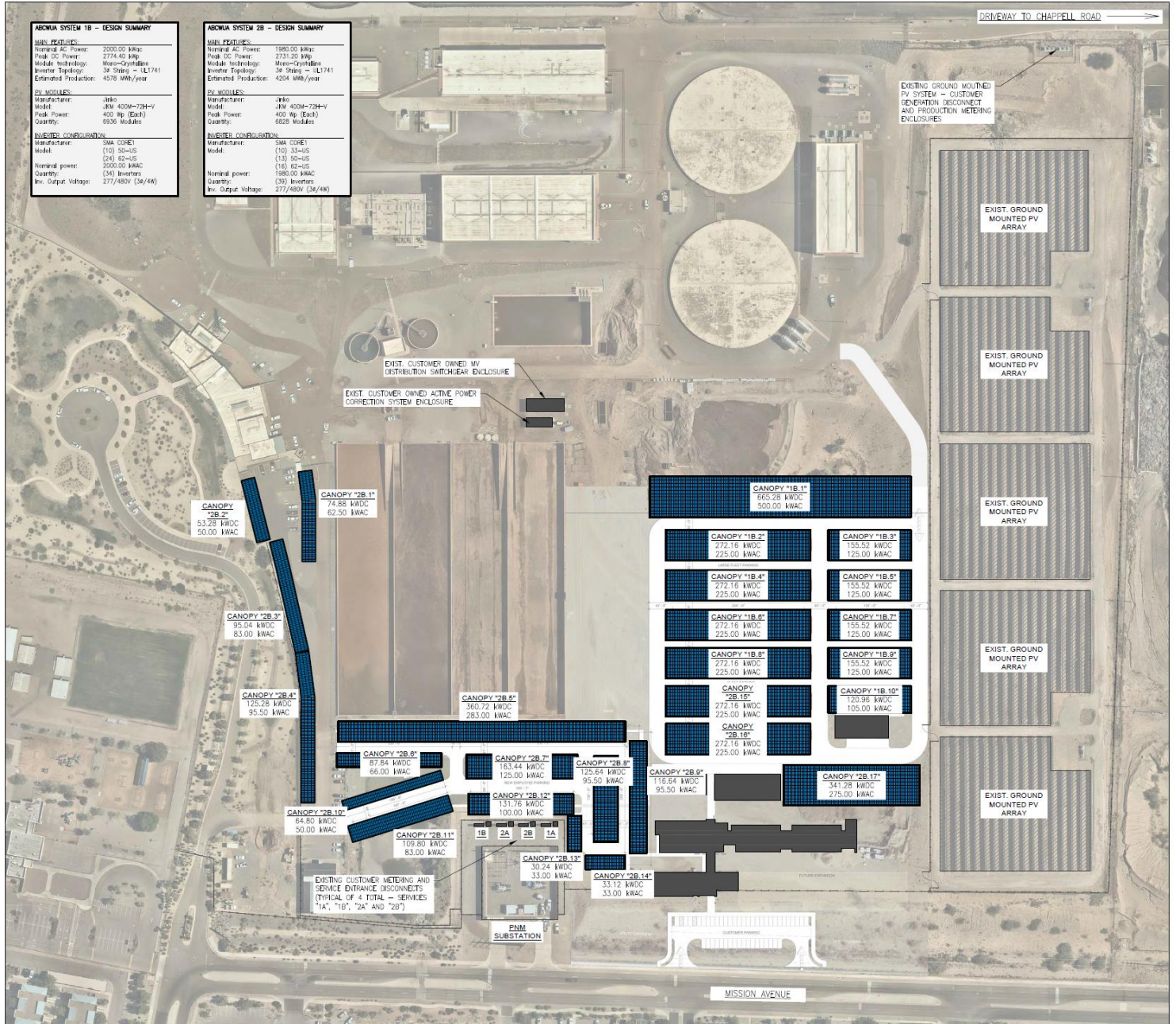
INVERTER CONFIGURATION:
 Manufacturer: SMA (CORE)
 Model: (10) 50-US
 (24) 50-US
 Nominal power: 2000.00 kWac
 Quantity: (34) Inverters
 Inv. Output Voltage: 277/480V (3ø/4W)

ABNOMA SYSTEM 2B - DESIGN SUMMARY

MAIN FEATURES:
 Nominal AC Power: 1980.00 kWac
 Peak DC Power: 2731.20 kWp
 Module Technology: Mono-Crystalline
 Inverter Topology: 3P String - UL1741
 Estimated Production: 4204 MWh/year

PV MODULES:
 Manufacturer: Jinko
 Model: JKM 420M-72H-V
 Peak Power: 400 Wp (Each)
 Quantity: 6828 Modules

INVERTER CONFIGURATION:
 Manufacturer: SMA (CORE)
 Model: (10) 50-US
 (13) 50-US
 (16) 62-US
 Nominal power: 1980.00 kWac
 Quantity: (39) Inverters
 Inv. Output Voltage: 277/480V (3ø/4W)



**AGREEMENT TO PROCURE RENEWABLE ENERGY
GENERATION AND RELATED RENEWABLE ENERGY CERTIFICATES**

This Agreement To Procure Renewable Energy Generation and Related Renewable Energy Certificates (Agreement) is made and entered into as of October, 2018 (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 (Affordable), 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 (Water Authority). Affordable and the Water Authority are sometimes hereinafter referred to individually as a “party” and collectively as the “parties.”

RECITALS

- A.** The Water Authority issued a request for proposals (RFP) in July 2018 seeking proposals from the solar industry to design, install and interconnect a solar array to be located at the Water Authority’s San Juan Chama Water Treatment Plant that would provide the best value and lowest levelized overall cost of energy to the Water Authority and facilitate the Water Authority’s continued compliance with certain provisions of the New Mexico Renewable Energy Act. The RFP has the meaning ascribed to it in Exhibit __ and is attached to this Agreement as Appendix A. In the event of a conflict between the RFP and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the RFP), this Agreement shall control.
- B.** Affordable, in response to the RFP, submitted a Proposal. The Proposal has the meaning ascribed to it in Exhibit __ and is attached to this Agreement as Appendix B. In the event of a conflict between the Proposal and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the Proposal), this Agreement shall control.
- C.** Affordable’s Proposal permits the Water Authority to fund the development of electric energy generation derived from a renewable energy resource, specifically solar and thus permits the Water Authority to continue to comply with the New Mexico Renewable Energy Act.
- D.** Affordable has experience in building, financing and operating solar energy facilities.
- E.** Exclusively for the benefit of the Water Authority, Affordable intends to build, finance and operate a solar energy facility (**SEF**), as more particularly described in Exhibits A-1 & A-2, which SEF is located on the Property owned by the Water Authority and described in Exhibit B hereto. Unless

separated for clarity, the term “SEF” will refer to the combined values or attributes of any and all systems described in Exhibits A-1 & A-2.

- F.** The Water Authority desires to purchase from Affordable, and Affordable desires to sell to the Water Authority all of the Energy Generation and related Renewable Energy Certificates (RECs), subject to the Terms and conditions, hereunder, delivered to Water Authority at the Delivery Point during the Term and otherwise in accordance with the terms of this Agreement.

AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this AGREEMENT and the Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Affordable and Water Authority agree as follows:

ARTICLE 1.

DEFINED TERMS; RULES OF INTERPRETATION

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

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

ARTICLE 2.

TERM AND TERMINATION

2.1 Term.

(a) The term of this AGREEMENT (the **Term**) shall commence on the Effective Date and shall be in effect until 11:59 p.m. local time in Albuquerque, New Mexico on the _____ year anniversary of the applicable Commercial Operation Date.

(b) Without constituting an Event of Default under this AGREEMENT, and without liability of either Party to the other Party (except for such amounts then due and owing under this AGREEMENT as of the date of such termination), Affordable shall have the right, but not the obligation, to terminate this AGREEMENT prior to expiration of the Term upon the occurrence of the following and by notification to the Water Authority 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 Generation 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 Affordable and/or its ability to perform its obligations under this AGREEMENT, unless the Parties have agreed to amend this AGREEMENT as provided in Section 8.6 below.

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

2.3 Removal of Arrays. Except as otherwise provided herein or in a lease relating to an Array (Lease), Affordable shall, within one hundred fifty (150) days following the end of the Term, or any termination of this AGREEMENT, at Affordable'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. Affordable 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 AGREEMENT, Affordable shall notify Water Authority in writing when the SEF has achieved Commercial Operation (***Notice of Commercial Operation***), and shall in such notice state the Commercial Operation Date. Unless waived by Water Authority, Affordable shall cause such Commercial Operation Date to occur no later than ten (10) months following completion of Utility's supplemental review or the signing of this AGREEMENT, whichever comes later.

2.5 Water Authority Optional Termination Payment; Notice. Without constituting an Event of Default under this AGREEMENT, and without liability of either Party to the other Party (except for such amounts then due and owing under this AGREEMENT as of the date of such termination), Water Authority may elect to terminate this AGREEMENT at any time after the sixth anniversary of the Commercial Operation Date and prior to its expiration by paying a Water Authority Optional Termination Payment in the amount set forth in the Water Authority Optional Termination Payment Schedule attached as Exhibit D-1. As soon as practicable after calculation of the Water Authority Optional Termination Payment by Affordable, including proration with respect to Net Operating Income (***NOI***) as described in Exhibit D-1, Affordable will notify Water Authority of the amount of the Water Authority Optional Termination Payment and any amount otherwise due and outstanding under this AGREEMENT. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Upon payment of the Water Authority Optional Termination Payment in full and any amount otherwise due and outstanding under this AGREEMENT by the Water Authority, this AGREEMENT shall terminate, and Affordable shall remove the Arrays as provided herein. Prior to payment in full of the Water Authority Optional Termination Payment, this

AGREEMENT shall remain in full force and effect. The Water Authority Optional Termination Payment Schedule shall not be construed as evidence of fair market value for purposes of Water Authority 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 AGREEMENT (other than those contained in this Article 3, Article 11 (Representations and Warranties; Water Authority Findings and Acknowledgement), Article 12 (Indemnity; Limitations), Article 13 (Confidentiality; Publicity), Article 14 (Dispute Resolution), Article 15 (Notices), Article 16 (Assignment and Financing) and Article 17 (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) Affordable shall have received or shall have obtained from Affordable'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 Affordable and as Affordable 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 Affordable's satisfaction.

(b) Affordable shall have received and accepted the audited Financial Statements of Water Authority for the most recent [3] years prior to the effective date of this AGREEMENT.

(c) Water Authority shall have received and accepted certificates of Affordable's good standing and authority to do business in the State of New Mexico prior to the effective date of this AGREEMENT.

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

(e) Affordable shall have entered into and/or submitted to the Water Authority for execution all contracts (including interconnection and net metering agreements) and delivered all other documents required by the Utility in connection with this AGREEMENT 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) Affordable shall have duly executed and delivered to the Water Authority a lease of the Water Authority owned Property.

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, Affordable's Financing Parties, on or before the start of construction, this AGREEMENT will immediately terminate, and the Parties will have no further obligations or liabilities other than those expressly stated to survive this AGREEMENT.

3.3 Water Authority Terms and Conditions.

(a) Insurance Specifications: See Article 8, Section 8.3, and Exhibit G.

(b) Local Employment Preference: Affordable will cause the party with which it contracts for construction of the Array 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 design and construction of the Array, including site preparation, grading and system installation. In particular, the Water Authority has a goal of assisting the few local solar businesses in positioning themselves to expand and participate in larger projects. To that end, the Water Authority prefers that Affordable involve and hire local solar businesses in coordination with the SW Chapter of the NM Solar Energy Association.

(c) Wage Rates. If applicable, Affordable 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) Affordable 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. Affordable 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 Affordable 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 Affordable of any obligation to perform as specified herein. Affordable 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) Affordable shall obtain necessary permits and licenses from the State of New Mexico, or the appropriate permitting authority having jurisdiction.

(ii) Affordable shall maintain a business registration with the City of Albuquerque or the County of Bernalillo, as appropriate, for the term of this AGREEMENT.

(f) Project Reporting. Affordable 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 the SEF that will include information about identified issues and how such issues are being resolved.

(g) Change in Affordable Representatives. The Water Authority reserves the right to request/require a change in Affordable representatives (Affordable principal points of contact) if the assigned representatives are not, in the opinion of the Water Authority, adequately meeting the Water Authority's needs.

(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 Affordable nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. Affordable shall be considered an independent contractor at all times in the performance of the AGREEMENT services described herein. Affordable further understands that it is not entitled to any benefits from the Water Authority 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 Water Authority as described in its Employee Personnel Manual.

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

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

(l) Reports and Information: In conjunction with Section 10.4, at such times and in such forms as Water Authority may reasonably require, Affordable shall

furnish to Water Authority 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, Affordable 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 Water Authority 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: Affordable 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 Affordable under this Agreement. Affordable shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act. Affordable 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 the contract 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 B-1 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 AGREEMENT, Affordable certifies it has not, either directly or indirectly, entered into action in restraint of full competition in connection with this AGREEMENT.

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

ARTICLE 4.

PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale of Energy Generation.

(a) Commencing on the first Commercial Operation Date and continuing throughout the remainder of the Term, Affordable shall make available to the Water

Authority, and the Water Authority shall take delivery of, at the Delivery Point, all of the Energy Generation produced by the SEF.

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

4.2 Price for Energy Generation. Water Authority shall pay Affordable for the Energy Generation, as metered at the Metering Device, at the applicable Energy Payment Rate in accordance with Exhibit B-1 hereto. The payment to be made by Water Authority to Affordable shall equal:

(a) an annual base charge for Energy Generation, all Environmental Incentives, all Environmental Attributes and the Reporting Rights, plus

(b) the Energy Generation for the relevant period multiplied by the Energy Payment Rate for such period.

4.3 Energy Payment Rate.

(a) Term. The Energy Payment Rate for the first Contract Year of the Term shall be as stated in Exhibit B-1 hereto. On the first anniversary of the Commercial Operation Date and each anniversary of such Commercial Operation Date thereafter during the Term, the Energy Payment Rate shall be increased by the Energy Payment Rate Increase Factor applicable to the Term stated in Exhibit B-1 hereto.

(b) No Extension Terms. The Term constitutes the maximum duration of this Agreement, except as may be extended by judicially ordered remedy.

(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. Affordable shall:

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

(b) provide a performance guarantee in the amount of Fifty Thousand (\$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 Water Authority and its approving agency.

The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by Affordable, a qualified provider within the meaning of Section 6-23-2((E)) NMSA 1978 in this AGREEMENT, 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 Generation. Title to and risk of loss of the Energy Generation will pass from Affordable to Water Authority at the Delivery Point. Affordable warrants that it will deliver the Energy Generation to Water Authority at the Delivery Point free and clear of all liens, security interests, claims and other encumbrances.

4.6 Governmental Charges.

(a) Affordable is responsible for paying income taxes attributable to Affordable for income received under this AGREEMENT.

(b) The Water Authority is responsible for all Governmental Charges attributable to the sale of the Energy Generation from Affordable to the Water Authority customarily charged by the electric utility serving the Water Authority (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 Generation to the Water Authority at the Delivery Point. The Water Authority shall promptly reimburse Affordable for any such Governmental Charges that are assessed to and paid by Affordable.

(c) Both Parties shall use reasonable efforts to administer this AGREEMENT and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Generation 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 Section 4.1(b)(3) above, the Water Authority understands and acknowledges that Affordable is not replacing 100% of its energy needs and that the Water Authority will still need to purchase some energy from the Utility. The Water Authority is relying on the AGREEMENT Energy Production Guarantees provided in AGREEMENT Exhibit F. In conjunction with said purchase of energy from the Utility, Water Authority 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 Water Authority.

4.8 Non-Disturbance Covenant. Affordable has been advised and has actual knowledge that the Water Authority, in the course of its utility obligation, extracts ground water from the regional aquifer which aquifer is below the Property and SEF Site, and further that the Authority, in the course of its utility obligation, engages in an aquifer storage and recovery project at the Property inclusive of the SEF Site and that such engagement may cause the water table below the SEF Site to increase. Notwithstanding

the above, the Water Authority warrants and covenants to use its best efforts to avoid any interference or disturbance of Affordable's operations on the Property.

ARTICLE 5. ENVIRONMENTAL ATTRIBUTES; ENVIRONMENTAL INCENTIVES; REPORTING RIGHTS

5.1 Title to Environmental Attributes, Environmental Incentives and Reporting Rights. The Water Authority shall own, and may assign, sell or retire as may be required by the New Mexico Renewable Energy Act and in its sole discretion, all right, title and interest associated with or resulting from the development and installation of the SEF or the production, sale, purchase or use of the Energy Generation including, without limitation (a) all Environmental Incentives, (b) all Environmental Attributes and (c) the Reporting Rights.

5.2 Further Assurances. Affordable, at Affordable's expense, shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence the Water Authority's right, title and interest in and to the Environmental Attributes, Environmental Incentives and Reporting Rights. If the standards used to qualify the Environmental Attributes, Environmental Incentives or Reporting Rights to which the Water Authority is entitled under this AGREEMENT are changed or modified, Affordable shall, at the Water Authority's request, use all reasonable efforts to cause the Environmental Attributes, Environmental Incentives 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 Affordable.

(a) Affordable 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 description set forth in Exhibit A-1 and generally in accordance with the construction schedule set forth in Exhibit A-3, (ii) use commercially reasonable efforts to design and construct the SEF to limit the impact the SEF may have on the Water Authority's operations, (iii) maintain the SEF in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and the terms of this AGREEMENT, (iv) 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 Generation caused by a SEF malfunction, and (v) provide the Water Authority with real-time online access to the performance data from the SEF.

(b) Affordable in conjunction with the Water Authority 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 Water Authority 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 Affordable to the Water Authority, Affordable has not received any response, such plans shall be deemed approved. Affordable's performance under this Agreement is conditioned on Affordable's determination that such grading and drainage is feasible and acceptable to Affordable.

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

(d) As may be appropriate, Affordable's scope of work, in addition to providing a functional, interconnected solar PV facility, includes all site preparation work, fencing as necessary, implementation of effective control of dust, weeds, and erosion for the duration of the AGREEMENT. Affordable 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 Affordable shall pay for water used during construction and operation at the rates applicable to such uses.

(e) Affordable will comply with all applicable Federal, State and local regulations affecting 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) Affordable hereby covenants not to commence construction of an Array without financing available and sufficient to complete construction of any Array.

6.2 Provisions in Lease Agreement. The Water Authority shall include in the lease agreement for the Property, provisions to allow Affordable reasonable access to the "point of common coupling" located on the Water Authority's property. Affordable and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times to the point of common coupling for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing any

Interconnection Equipment, and to any documents, materials and records of the Water Authority relating to the Water Authority's property that Affordable reasonably requests in conjunction with these activities. Affordable shall comply with all reasonable access and notice procedures agreed upon between the Water Authority and Affordable from time to time in writing relating to activities conducted by or on behalf of Affordable on the Property related to the point of common coupling. During any such activities, Affordable, and its sub-contractors, agents, consultants and representatives, shall comply with the Water Authority's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Affordable), and Affordable 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 the Water Authority's near-by or adjacent activities and operations to the extent reasonably practicable. Notwithstanding anything to the contrary in this Section 6.2, Affordable shall be allowed immediate access to the Property and the point of common coupling in connection with any emergency condition then existing with respect to the point of common coupling that could reasonably be expected to pose an imminent threat to the safety of persons or property.

6.3 Affordable's Maintenance.

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

(b) Notwithstanding Section 6.2 above, the Water Authority acknowledges, agrees and accepts that activities conducted by or on behalf of Affordable on the Property relating to the SEF may temporarily interfere with Water Authority's conduct of business thereon. Affordable agrees to take all commercially reasonable measures to minimize such interference and, if requested by the Water Authority, shall reschedule its activities so as not to interfere with Water Authority's operations.

6.4 Water Authority Maintenance of Contiguous Property. The Water Authority shall maintain the real property owned or occupied by the Water Authority which abuts the Property on which the Array is located in a manner which will not disturb or interfere with the operation and maintenance of the SEF by Affordable. Water Authority agrees to reasonably assist Affordable (at no cost to the Water Authority) in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the SEF and Interconnection Equipment, including but not limited to the submission of applications for interconnection of the SEF with the local electric utility and applications for the resale of excess power to the local utility (in case of a Water Authority Event of Default or otherwise). Water Authority 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 SEF with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit A-12 in connection with the Premises, Affordable 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 SEF 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 Affordable 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 Generation. If the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurements of Energy Generation shall be determined by Affordable in a commercially reasonable manner by reference to quantities of Energy Generation 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 Generation shall be calculated in good faith by Affordable 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) Affordable Maintenance of Metering Device. Affordable 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) Affordable 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 Generation delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 7.2 and (C) Affordable 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 Generation for any period is decreased (such quantity, the **Energy Deficiency Quantity**), Affordable shall reimburse the Water Authority for the amount paid by the Water Authority in consideration for the Energy Deficiency Quantity by crediting such amount against the Water Authority's payment obligations under this AGREEMENT. If as a result of such adjustment the quantity of Energy Generation for any period is increased (such quantity, the **Energy Surplus Quantity**), Affordable shall separately invoice for, and the Water Authority 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. Affordable shall be deemed owner of the SEF but not the energy or REC's associated with the SEF. In the event that any Array is located on land leased from the Water Authority, the provisions of Section 8.1(a) shall apply.

(a) The Water Authority acknowledges and agrees that Affordable may be required to grant or cause to be granted to Affordable's Financing Parties a security interest in the SEF and Water Authority 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 AGREEMENT, at law or in equity.

(b) The Parties specifically acknowledge and agree that Affordable or Affordable's Financing Parties shall be Affordable of the SEF for federal income tax purposes, and in that connection, Affordable and/or Affordable'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 AGREEMENT shall be construed to convey to Water Authority a license or other right to trademarks, copyrights, technology or other intellectual property of Affordable or associated with the SEF.

(d) In no event shall Affordable be considered a public utility by the Water Authority or any third party entity.

8.2 Array Loss.

(a) Affordable 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 Water Authority or Water Authority's agents, representatives, customers, vendors, visitors, employees, contractors or invitees (collectively, **Water Authority Misconduct**), shall be the responsibility of the Water Authority, its agents, representatives, customers, 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 Affordable, results in less than total damage, destruction or loss of the Array, this AGREEMENT will remain in full force and effect with respect to such Array and Affordable will, at Affordable'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 Water Authority Misconduct, Water Authority shall, promptly upon demand from Affordable, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this AGREEMENT, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. To the extent that such Array Loss has been caused by Affordable, Affordable shall, promptly upon demand from the Water Authority, 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 Generation 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 Affordable, results in total damage, destruction or loss of the Array, Affordable shall, within twenty (20) Business Days following the occurrence of such Array Loss, notify Water Authority whether Affordable is willing, notwithstanding such Array Loss, to repair or replace the Array.

(i) In the event that Affordable notifies the Water Authority that Affordable is not willing to repair or replace the Array, this AGREEMENT will terminate automatically upon the effective date of such notice and Affordable shall promptly remove the Array from the Property in accordance with Section 2.3 above. If such Array Loss has been caused by Affordable, Affordable shall, within thirty (30) Business Days following such termination, be obligated to pay to the Water Authority the Affordable Termination Payment for that Contract Year as specified in Exhibit D-2. If such Array Loss has been caused by Water Authority Misconduct, at Affordable's election, Water Authority shall, within ten (10) Business Days following such termination, pay to Affordable, as liquidated damages, an amount equal to the Water Authority Optional Termination Payment, applicable as of such termination date, which obligation shall survive the termination of this AGREEMENT with respect to such Array.

(ii) In the event that Affordable does not elect to receive an amount equal to the Water Authority Optional Termination Payment as liquidated damages (or such lesser amount as may be payable from available Pledged Revenues), nothing in this AGREEMENT shall prohibit Affordable from pursuing any non-contractual remedy or remedies available at law or in equity, and nothing in this AGREEMENT shall be construed as limiting Affordable's non-contractual remedies for Array Loss caused by the wrongful conduct or the wrongful failure to act on the part of the Water Authority, including, without limitation, remedies for tortious misconduct, and the limitation set forth in subsection (d) below shall not be applicable to an award by a court of competent jurisdiction in connection with such non-contractual claims.

(iii) In the event that Affordable notifies the Water Authority that Affordable is willing to repair or replace the Array, the following shall occur: (A) this AGREEMENT will remain in full force and effect; (B) Affordable will repair or replace the Array as quickly as economically practicable; (C) if such Array Loss has been caused, totally or partially, by Water Authority Misconduct, the Water Authority shall, promptly upon demand from Affordable, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, and lost revenues under this AGREEMENT; and (D) if such Array Loss has been caused, totally or partially, by Affordable, Affordable shall, promptly upon demand from Water Authority, 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 Generation 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 G 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 AGREEMENT 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 AGREEMENT (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 AGREEMENT; *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 AGREEMENT, in whole or in part, without any liability to the Claiming Party as a result of such termination and Affordable 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 Affordable 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 Affordable in respect of this AGREEMENT (including due to a Law that increases Affordable's cost of compliance with this AGREEMENT), the Parties shall work in good faith to amend the provisions of this AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT, 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 Affordable's failure to maintain insurance as provided in Exhibit E hereto, in which case such cure period shall be ten (10) days;

(d) the Water Authority 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 ten (10) days after receipt of written notice from the Non-Defaulting Party;

(f) with respect to Water Authority, Water Authority 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 Water Authority under this AGREEMENT, and any existing agreements required for the continued receipt of Environmental Incentives, Environmental Attributes or Reporting Rights by Affordable (or to otherwise reasonably cooperate with Affordable 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 Affordable and (ii) the resulting or transferee entity’s Credit Rating is not reasonably acceptable to Affordable.

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 AGREEMENT 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 AGREEMENT; and

(c) to suspend performance due to the Defaulting Party under this AGREEMENT. In the event that the Non-Defaulting Party designates an Early Termination Date, this AGREEMENT will terminate as of the Early Termination Date.

9.3 Water Authority Rights Upon Default. In the event that the Water Authority is the Non-Defaulting Party, the Water Authority may elect to terminate this AGREEMENT, in which event the Water Authority will be entitled, at its sole and exclusive option and in its sole and absolute discretion to require Affordable to remove the SEF, as provided in Section 2.3 above, and to require Affordable to pay the Affordable Termination Payment for the Contract Year as listed in Exhibit D-2. Notwithstanding any other provision of this Agreement, prior to the exercise of its remedies under this Section 9.3, the Water Authority shall allow customary notice and cure rights for the benefit of any person who provides financing for the SEF to Affordable. Such notice and cure rights shall be set forth in the Water Authority's consent to assignments or transfers to such financing parties, such as a Consent to Collateral Assignment or Consent to Sale and Leaseback, as provided in Article 16 hereof.

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

(a) Affordable may obtain a court order of specific performance of this AGREEMENT, to which the Water Authority hereby consents, pursuant to which Affordable shall continue to deliver Energy to the Water Authority and the Water Authority shall be obligated to pay each AGREEMENT payment as the same become due the Water Authority hereby agrees that an order of specific performance directing the Water Authority to accept and purchase Energy as provided in Section 4.1 and Section 4.2 of this AGREEMENT is a necessary and appropriate remedy, and not to oppose Affordable's application for such relief on an expedited basis.

(b) Alternatively, after a thirty (30) Business day period following a Water Authority Event of Default, with proper notice having been given, Affordable may terminate this AGREEMENT 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 the Water Authority, plus (c) the cost of connection and metering necessary to deliver Energy to such third party or parties. Affordable's rights under this Section 9.4(b) shall survive termination of the AGREEMENT by Affordable under this Section 9.4(b).

(c) In the event that Affordable elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Affordable as a result of termination of this AGREEMENT 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 AGREEMENT.

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 AGREEMENT 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 AGREEMENT.

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; WATER AUTHORITY ADMINISTRATION OF PLEDGED REVENUES

10.1 Invoicing and Payment.

(a) The annual base charge for Energy Generation, all Environmental Incentives, all Environmental Attributes and the Reporting Rights in the sum of \$350,000, shall be due upon the Effective Date and on the anniversary of the Effective Date for the Term of this Agreement. Affordable shall prepare and submit an annual invoice to Water Authority Accounts Payable, Department of Finance by the 7th day of the month immediately following the anniversary of the Effective Date. Such annual base charge shall 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).

(b) Invoicing for the Energy Generation (per kWh) for the relevant period multiplied by the Energy Payment Rate for such period shall be accomplished as follows: Affordable shall prepare and submit invoices to Water Authority Accounts Payable, Department of Finance by the 7th day of the month immediately following the billing period. All invoices under this AGREEMENT 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). 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 AGREEMENT at any time within three (3) months 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 AGREEMENT, 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 AGREEMENT and/or the Lease Agreement between the Parties of even date herewith for Affordable's placement of the SEF on the Water Authority's property (the "Lease"). Accordingly, all amounts owed by each Party to the other Party under this AGREEMENT 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 AGREEMENT and/or the Lease against any undisputed amount due and owing from such Party to the other Party under this AGREEMENT 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 AGREEMENT. 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 AGREEMENT 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; WATER AUTHORITY 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 AGREEMENT 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 AGREEMENT and each other document executed and delivered in accordance with this AGREEMENT 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 AGREEMENT, 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 AGREEMENT;

(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 AGREEMENT or the License or which purports to affect the legality, validity or enforceability of this AGREEMENT 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 AGREEMENT 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; and

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

11.2 Water Authority Acknowledgement Regarding Affordable's Status under Section 366 of the Bankruptcy Code.

(a) Water Authority acknowledges and agrees that, for purposes of this AGREEMENT, Affordable is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Water Authority agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Water Authority is a debtor; provided that, as of the Effective Date, Water Authority 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 (**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 or 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 Water Authority shall be obligated to indemnify Affordable 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 AGREEMENT 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 AGREEMENT 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 Water Authority Optional Termination Payment or Affordable Termination Payment, and except as otherwise expressly provided in this AGREEMENT, 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 AGREEMENT 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 AGREEMENT.

12.3 Limitation on Warranties. Except as expressly provided in this AGREEMENT, 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.

OPTION TO PURCHASE SEF

13.1 Offer to Purchase. Water Authority may offer to purchase all of Affordable's right, title and interest in and to the SEF Assets on the terms set forth in this AGREEMENT (the "**Purchase Offer**"). The Purchase Offer may be made by Water Authority 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 Water Authority Request for Appraisal of SEF Value.

(a) Water Authority shall have the right to provide notice to Affordable 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 (but no more than 270 days) prior to the (A) 6th, 10th, 14th, 18th, or 22nd anniversary of the first Commercial Operation Date, or (B) the end of the Term.

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

13.3 Selection of Independent Appraiser. Within twenty (20) Business Days of Affordable's receipt of a notice provided under Section 13.2, Affordable and Water Authority 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 Affordable and Water Authority, together with all supporting documentation that details the calculation of the Preliminary Determination. Affordable and Water Authority 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 Affordable and Water Authority, 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. Affordable and Water Authority 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 Water Authority and Affordable agree to the Proposed Purchase Price, Water Authority 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 Affordable. Once Water Authority delivers the Exercise Notice to Affordable, Water Authority shall become obligated to purchase, and Affordable 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) Affordable shall surrender and transfer to Water Authority on an as-is, where-is basis, but free of liens and encumbrances, all of Affordable'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) Water Authority 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 Water Authority, 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 Water Authority.

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 Affordable.

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 AGREEMENT. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for

purposes permitted by this AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT, 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 AGREEMENT and all materials of any kind (including tax opinions or other tax analysis) that are provided relating to such tax treatment or tax structure.

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 Water Authority'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, Affordable 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 Water Authority and other features of the SEF.

(c) Water Authority shall have the right to publicize, without prior approval by Affordable, 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, Water Authority shall have the right to display photographs of the SEF in its advertising and promotional materials, provided, that any such materials identify Affordable as the “developer, Affordable 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 AGREEMENT (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 AGREEMENT 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 AGREEMENT, 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 AGREEMENT 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.

Water Authority:

Albuquerque Bernalillo County Water Authority
Attn: Executive Director
One Civic Plaza NW Room 5012
Albuquerque, NM 87102

Affordable:

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

ARTICLE 17.
ASSIGNMENT; FINANCING

17.1 Assignment.

(a) Except as otherwise provided in Section 17.2, neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this AGREEMENT without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, without the consent of THE Water Authority, Affordable may assign any of its rights, duties or obligations under this AGREEMENT, *provided, however*, that any such assignee pursuant to clause (i) through clause (v) below shall agree to be bound by the terms and conditions hereof: (i) to one or more of its Affiliates, (ii) to any present or future purchaser of the power generated by the SEF, (iii) to any Person succeeding to all or substantially all of the assets of Affordable, (iv) to a successor entity in a merger or acquisition transaction or (v) to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction. Affordable shall notify the Water Authority of any assignment of its rights, duties or obligations under this AGREEMENT.

(b) Subject to the foregoing restrictions on assignment, this AGREEMENT will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(c) If the consent of the Water Authority is required hereunder, Affordable shall provide written notice of assignment to the Water Authority, and such 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 Affordable concerning the proposed assignee.

17.2 Financing.

(a) In connection with an assignment pursuant to clause (v) of Section 17.1(a), Affordable may pledge its interest in this AGREEMENT, including any rights to payment, and the SEF, as security for loans or financing. If any of Affordable's Financing Parties requests any amendments or clarifications to the terms and conditions of this AGREEMENT, Water Authority agrees to consider any such requests in good faith, at Affordable's expense. The Water Authority hereby agrees that its consent shall be deemed to have been given in connection with an assignment by Affordable pursuant to clause (v) of Section 17.1(a) to this AGREEMENT if the proposed assignee has, prior experience operating solar facilities similar to the SEF Assets that is at least equivalent to that of Affordable and a tangible net worth that is at least equal to that of Affordable as of the date hereof

(b) The Water Authority acknowledges that Affordable will be financing the acquisition and installation of the SEF with financing accommodations from one or more financial institutions and that Affordable's obligations thereunder will be secured by, among other collateral, a pledge or collateral assignment of this AGREEMENT 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 Affordable. In order to facilitate such necessary financing, the Water Authority agrees to provide reasonable cooperation to Affordable in connection with financing arrangements as further described in Section 17.3 hereof.

17.3 Additional Cooperation with Financing. The Water Authority acknowledges that Affordable will be financing the development, acquisition, installation and/or operation of the SEF and the Water Authority agrees that it shall reasonably cooperate with Affordable and Affordable'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 Affordable or Affordable's Financing Parties, (ii) delivering one or more Consents to Sale and Leaseback or Consents to Collateral Assignment in a form reasonably satisfactory to Affordable, and will consider in good faith such changes or alternative documentation as may be reasonably requested by Affordable's Financing Parties and (iii) providing such opinions of counsel and other matters as Affordable or Affordable's Financing Parties may reasonably request.

ARTICLE 18. MISCELLANEOUS

18.1 Governing Law. This AGREEMENT 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 AGREEMENT (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 AGREEMENT 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 AGREEMENT, in order to be effective, any amendment, modification or change to this AGREEMENT 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 AGREEMENT 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 AGREEMENT, and shall not render this AGREEMENT unenforceable or invalid as a whole. Rather the part of this AGREEMENT 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 AGREEMENT will remain in full force and effect.

18.5 No Third Party Beneficiaries. Nothing in this AGREEMENT 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 Affordable's Financing Parties to the extent expressly provided herein.

18.6 No Recourse to Affiliates. This AGREEMENT is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 [that could not be anticipated at the date of execution of this AGREEMENT 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 AGREEMENT.

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

Intending to be legally bound, Affordable and the Water Authority have signed this Agreement through their duly authorized representatives effective as of the date set forth by their respective signatures below.

AFFORDABLE SOLAR INSTALLATION, INC., a New Mexico Corporation

By: _____

Name: Ryan Centerwall

Title: President

Date: _____

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY:

By: _____

Name:

Title:

Date: _____