Solar Power Purchase Agreement

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

Purchaser:		*Seller:*	
Name and Address	Pullman School District 315 SE Crestview St. Pullman, WA 99163 Attention: Juston Pollestad	Name and Address	Zero Emissions Northwest, LLC 3216 N Washington St, Spokane WA 99205
Phone	509-332-3581	Phone	509-518-5147
Fax	509-336-7202	Fax	N/A
E-mail	TBD@fpsd267.org	E-mail	David.Funk@zeroemissionsnorthwest.com
Premises Ownership	Purchaser owns the Premises.	Additional Seller Information	
Tax Status	Tax Exempt		
Project Name	Pullman Middle School Community Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the "**System**") and installed on the real property comprising Purchaser's premises described or depicted in Schedule A to **Exhibit 2** (the "**Premises**"), including any buildings and other improvements on the Premises other than the System (the "Improvements").

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

Exhibit 1	Pricing
Exhibit 2	System Description, Delivery Point and Premises
Exhibit 3	General Terms and Conditions

Purchaser: **Pullman School District**
Signature:
Printed Name:
Title:
Date:

Seller: **Zero Emissions Northwest, LLC**
Signature:
Printed Name:
Title:
Date:

ZERO EMISSIONS NORTHWEST
PROJECTS THAT CHANGE COMMUNITIES

Exhibit 1:
Pricing

1. **Initial Term**: Ten (10) years, beginning on the Commercial Operation Date (the "**Initial Term**").

2. **Additional Terms**: Up to two (2) terms of five (5) years, each beginning on the expiration of the Initial Term, each an "**Additional Term**".

3. **Contract Price**:

Contract Year	Solar Energy $/kWh	Insurance Premium	Total Solar **CONTRACT PRICE** $/kWh	Average $/kWh
1	$ 0.028	$ 0.009	$ 0.037	
2	$ 0.029	$ 0.009	$ 0.038	
3	$ 0.029	$ 0.010	$ 0.039	
4	$ 0.030	$ 0.010	$ 0.039	
5	$ 0.030	$ 0.010	$ 0.040	
6	$ 0.031	$ 0.010	$ 0.041	
7	$ 0.032	$ 0.010	$ 0.042	
8	$ 0.032	$ 0.011	$ 0.043	
9	$ 0.033	$ 0.011	$ 0.044	
10	$ 0.033	$ 0.011	$ 0.044	$ 0.041

Contract Year	Estimated Utility $/kWh	Estimated Solar kWh	Estimated Utility Purchases without Solar	Total Utility Purchases without Solar
1	$ 0.102	153,000	$ 15,600	
2	$ 0.106	152,000	$ 16,100	
3	$ 0.110	151,000	$ 16,700	
4	$ 0.115	150,000	$ 17,200	
5	$ 0.119	149,000	$ 17,800	
6	$ 0.124	148,000	$ 18,400	
7	$ 0.129	147,000	$ 19,000	
8	$ 0.134	146,000	$ 19,600	
9	$ 0.140	145,000	$ 20,200	
10	$ 0.145	144,000	$ 20,900	$ 181,500

Contract Year	Total Solar $/kWh	Estimated Solar kWh	Estimated Solar Purchases	Total Solar Purchases
1	$ 0.037	153,000	$ 5,700	
2	$ 0.038	152,000	$ 5,800	
3	$ 0.039	151,000	$ 5,800	
4	$ 0.039	150,000	$ 5,900	
5	$ 0.040	149,000	$ 6,000	
6	$ 0.041	148,000	$ 6,100	
7	$ 0.042	147,000	$ 6,100	
8	$ 0.043	146,000	$ 6,200	
9	$ 0.044	145,000	$ 6,300	
10	$ 0.044	144,000	$ 6,400	$ 60,300

Contract Year	Avoided Utility Purchases	Total Avoided Purchases
1	$ 9,900	
2	$ 10,300	
3	$ 10,900	
4	$ 11,300	
5	$ 11,800	
6	$ 12,300	
7	$ 12,900	
8	$ 13,400	
9	$ 13,900	
10	$ 14,500	$ 121,200

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions**. The Contract Price is based on the following assumptions:

   a. Interconnection costs for the System will not exceed $0.00 in the aggregate.

   b. Statutory prevailing wage rates (e.g., Davis-Bacon) do not apply.

   c. All prices in this Agreement are calculated based on an upfront rebate of 100%. In the event that the reimbursable rebate is not paid by the Utility, the PPA price shall be equal to 95% of the Utility rate.

   d. The Contract Price is exclusive of Seller's Taxes (as defined in Section 3(d) of Exhibit 3), and Buyer shall be responsible for all Seller's Taxes at the rates in effect as of the Effective Date.

5. **Contract Price Exclusions**. Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of **Exhibit 3**, the Contract Price excludes the following:

   a. Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including: client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).

   b. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.

   c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).

   d. Removal of existing lighting, light poles, or concrete light post bases.

   e. Roof membrane maintenance or reroofing work.

   f. Structural upgrades to the Improvements, including ADA upgrades.

   g. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).

   h. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser's energy use, the Premises and the Improvements, including building plans and specifications.

6. Termination Payment Schedule (**Exhibit 3**, Section 11(b)):

Contract Year	Termination Payment
1	$72,000
2	$71,000
3	$70,000
4	$69,000
5	$68,000
6	$67,000
7	$66,000
8	$65,000
9	$64,000
10	$63,000

Exhibit 2:
System Description, Delivery Point, and Premises

1. **System Location:** Pullman School District

2. **System Size** (DC kW): 130.38 DC kW

3. **System Description**: Roof mounted solar on Pullman Middle School interconnecting behind the meter.

4. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:

   a. Premises, including the Improvements (as applicable);

   b. Proposed System location;

   c. Delivery point for electricity generated by the System shall be Meter measuring the kWh output of the solar system as defined in Section 10 (the "**Delivery Point**");

   d. Access points needed for Seller to install and service the System (building. access, electrical room, stairs etc.); and

   e. Construction assumptions (if any).

Schedule A

PROJECT INFORMATION
PROJECT NAME: PULLMAN MIDDLE SCHOOL

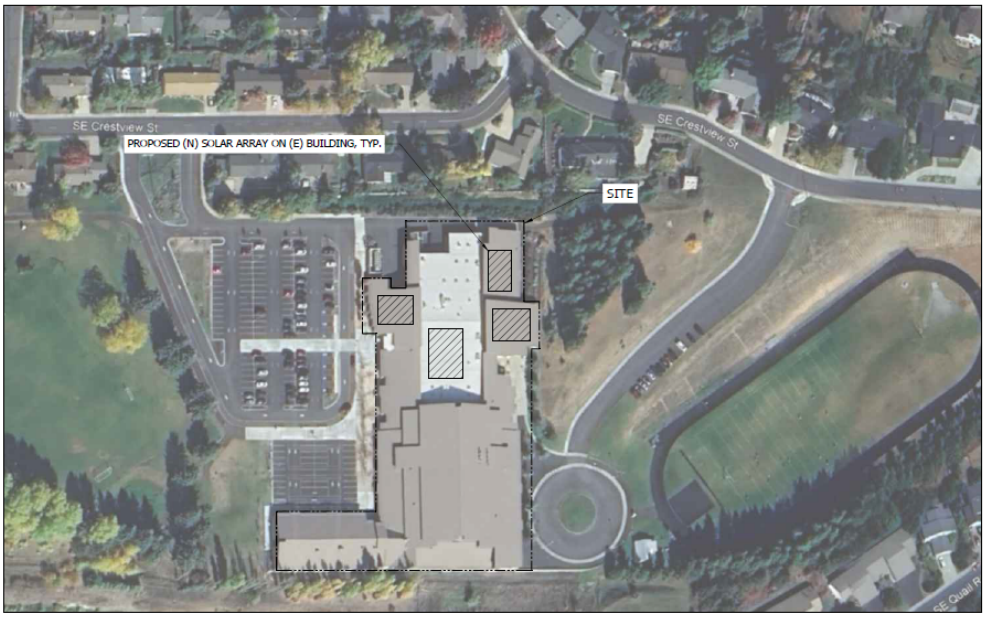
SITE ADDRESS: 315 SE CRESTVIEW ST, PULLMAN, WA 99163

OWNER: PULLMAN SCHOOL DISTRICT

SCOPE OF WORK

SUBMITTAL FOR CITY BUILDING AND ELECTRICAL REVIEW SOLAR PHOTOVOLTAIC SYSTEM: THIS PROJECT ENTAILS THE INSTALLATION OF A PHOTOVOLTAIC SYSTEM. THIS SYSTEM WILL BE INTERCONNECTED TO AND WILL BE OPERATED IN PARALLEL WITH THE ELECTRIC GRID PER THE REQUIREMENTS OF THE NATIONAL ELECTRICAL CODE AND UTILITY INTERCONNECT AGREEMENT. CONDITIONS OF APPROVAL: ALL CONSTRUCTION SHALL OCCUR BETWEEN THE HOURS OF 7AM & 6PM, EXCEPT FOR THE PURPOSE OF EMERGENCIES

PULLMAN MIDDLE SCHOOL
SOLAR PV SYSTEM
(130.38KW DC / 100KW AC)



1 SITE PLAN
NO SCALE

PROJECT:
PULLMAN MIDDLE SCHOOL

PULLMAN SCHOOL DISTRICT

PROJECT ADDRESS:
315 SE CRESTVIEW ST,
PULLMAN, WA 99163

ISSUE	DESCRIPTION	DATE

REV	DESCRIPTION	DATE

PROJECT NO: 4002
PROJECT ENG: GLJ
DRAWN BY: GJ
CHK'D BY: SH QA: DF PM: DF

SHEET TITLE:
SITE PLAN

SHEET #:
PV-1

SCALED FOR 24X36

Exhibit 3:
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Exhibit 3:
General Terms and Conditions

1. **Purchase and Sale of Electricity**. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser's electricity consumption requirements at the Premises exceed the output of the System.

2. **Term and Termination**.

a. **Effective Date; Term**. This Agreement is effective as of the Effective Date**.** The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 6) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the "**Term**").

b. **Additional Terms**. The Parties may agree in writing to extend this Agreement for one or more Additional Term(s) at a Contract Price to be agreed.

c. **Termination Due to Contract Price Adjustments or Lack of Project Viability**. If, at any time after the Effective Date and prior to Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contact Price calculations pursuant to Section 5 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have negotiated a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.

d. **Termination by Purchaser for Delay**. If Commencement of Installation has not occurred **(2) years** after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. Purchaser shall not liable for any damages in connection with such termination.

3. **Billing and Payment; Taxes**.

a. **Monthly Charges**. Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the $/kWh rate shown in **Exhibit 1** (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable $/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in **Exhibit 1**, Item 4 are Purchaser's responsibility.

b. **Monthly Invoices**. Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

c. **Payment Terms**. All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.

d. **Taxes**.

i. **Purchaser's Taxes**. Purchaser is responsible for: (1) payment of, or reimbursement of Seller, for all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the utility's electricity distribution system; and (2) real property taxes.

ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System **("Seller's Taxes").**

4. **RECs and Incentives**. As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the RECs and Incentives. Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs and Incentives. Purchaser is not obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

5. **Project Completion**.

a. **Project Development**. Seller shall diligently pursue the development and installation of the System, subject to Section 2(c), Section 11 and the remaining provisions of this Section 5.

b. **Permits and Approvals**. Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "**Approval**"):

i. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

ii. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility**.**

c. **Commencement of Installation**. Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within [____] days after the Effective Date. "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.

d. **Force Majeure**.

i. **Force Majeure Event**. If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the

affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.

ii. **Extended Force Majeure**. If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, (b) Seller shall remove the System as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (b) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

iii. "**Force Majeure Event**" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.

e. **Extension of Time**. If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.

f. **Commercial Operation**. Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to operate from the relevant Governmental Authority. Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser's reasonable request.

6. Installation, Operation and Maintenance.

a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulation and local building codes.

b. **System Design Approval**. Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have ten (10) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such ten (10) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 2(c) above.

c. **System Repair and Maintenance**. Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.

d. **Outages**. Upon Purchaser's written request, Seller shall take the System off-line for a total of one-hundred (100) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the one-hundred (100) hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(b) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

e. **Maintenance of Premises**. Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.

f. **No Alteration of Premises**. Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

7. **Miscellaneous Rights and Obligations of the Parties**.

a. **Access Rights**.[1] Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. **Seller and its employees, agents and contractors must comply with Purchaser's site safety and security requirements when on the Premises (other than in respect of the fenced area governed by the Exclusive License) during the License Term.** During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.

b. **OSHA Compliance**. Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.

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[1] *The Agreement provides for access to the Premises through a license and assumes that the Purchaser is the owner of the Premises. However, certain Sellers may prefer for access to the Premises to be provided through a lease or sublease. If the Purchaser is not the owner of the Premises, the lease or license will have to be entered into with the third party owner.*

c. **Safeguarding the Premises**. Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors.

d. **Insolation**. Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.

e. **Use and Payment of Contractors and Subcontractors**. Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.

f. **Liens**.

i. **Lien Obligations**. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.

ii. **Lien Indemnity**. Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).

8. **Relocation of System**.

If, during the Term, Purchaser ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System, at Purchaser's cost, in lieu of termination of the Agreement by Seller for a Default Event by Purchaser. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement pursuant to Section 11(b)(ii).

9. **Removal of System upon Termination or Expiration**.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and

repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. Measurement.

a. **Meter**. The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system installed and maintained by Seller as part of the System.

b. **Meter Calibration**. Seller shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Purchaser's cost.

11. Default, Remedies and Damages.

a. **Default**. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");

ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;

iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,

v. in the case of Purchaser as the Defaulting Party only, Purchaser (a) loses its rights to occupy and enjoy the Premises, unless (i) the Parties agree upon a relocation under Section 8 above, or (ii) Purchaser pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (b) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (i) is permitted under this Agreement, or (ii) is cured within ten (10) days after written notice thereof from Seller**.**

b. **Remedies**.

i. **Suspension**. Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement. Seller's rights under this Section 11(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.

ii. **Termination**. Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.

iii. **Damages Upon Termination by Default**. Upon a termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

(1) Termination by Seller. If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 6 of **Exhibit 1,** and (ii) any other amounts previously accrued under this Agreement and then owned by Purchaser to Seller.

(2) Termination by Purchaser. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) all direct costs reasonably incurred by Purchaser by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11(b)(iii)(2) cannot be less than zero.

iv. **Liquidated Damages**. The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

c. **Obligations Following Termination**. If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Purchaser pursuant to Section 11(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.

i. **Reservation of Rights**. Except in the case of a termination under Section 11(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 11(b)(ii), nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation**. Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.

iii. **No Limitation on Payments**. Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. **Representations and Warranties**.

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

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally)**.**

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects**.**

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

i. **Licenses**. (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.

ii. **Other Agreements**. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.

iii. **Accuracy of Information**. All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. **Purchaser Status**. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. **Limit on Use**. No portion of the electricity generated by the System shall be used to heat a swimming pool.[2]

c. **Seller's Warranties**.

i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations**.** This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.

ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties**.**

NO OTHER WARRANTY. THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. IF A PERFORMANCE GUARANTY IS BEING PROVIDED PURSUANT TO SECTION 4(d) OF EXHIBIT 1, THE PERFORMANCE GUARANTY WILL REPRESENT A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

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[2] *This limitation reflects the requirements to qualify for the Federal Energy Tax Credit under §48 of the Internal Revenue Code. Individual states or localities may have further restrictions on the use of electricity from the System. Purchasers and Sellers are encouraged to consult local law to ensure that no such restrictions are being violated.*

13. Insurance.

a. Insurance Coverage. At all times during the Term, the Parties shall maintain the following insurance, as applicable:

i. Seller's Insurance. Seller shall maintain or ensure the following is maintained (a) commercial general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (b) employer's liability insurance with coverage of at least $1,000,000 and (c) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.

ii. Purchaser's Insurance. Purchaser shall maintain or ensure the following is maintained (a) property insurance on the System for the replacement cost thereof and be reimbursed by Seller and (b) commercial general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate.

(1) (30) days prior to the Commercial Operation Date, Seller shall provide Purchaser with the replacement cost of the System and Purchaser shall purchase and itemize the increase in insurance costs due the insurance requirements detailed in section 13.a.ii.(a). Seller shall reimburse the Purchaser within (14) business days for the insurance premium and divide this cost by the estimated kWh of the project as calculated by PVWatts or a similar satellite-based solar production software. The $/kWh insurance premium shall be added back into the Contract Price for the first year.

(2) Each additional year, (30) days prior to the anniversary of the Commercial Operation Date or Seller's typical insurance procurement schedule, Purchaser shall itemize the increase in insurance costs due to the insurance requirements detailed in section 13.a.ii.(a). Seller shall reimburse the Purchaser within (14) business days for the insurance premium and divide this cost by the previous year's actual kWh of the project. The $/kWh insurance premium shall be added back into the Contract Price.

b. Policy Provisions. Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

c. Certificates. Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

d. Deductibles. Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. Ownership; Option to Purchase.

a. Ownership of System.

i. **Ownership; Personal Property**. Throughout the Term, Seller shall be the legal and beneficial owner of the System , and all RECs and Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

ii. **Notice to Purchaser Lienholders**. Purchaser shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.

iii. **Fixture Disclaimer**. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.

iv. **SNDA**. Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Purchaser), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

v. **Eviction Notice**. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

i. **Exercise of Option**. At the end of the tenth (10th) Contract Years and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to $34,000 plus all reasonable transaction fees & applicable transfer taxes. Purchaser shall have the option to pay the purchase price over a 2-year period via an increased Contract Price. For example, if the purchase price is $10,000 then an additional $5,000 per year will be divided by the average kWh of the previous years will be prorated monthly and added to each invoice. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.

ii. **Title Transfer; Warranties; Manuals**. Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), Seller will have no further liabilities or obligations hereunder for the System.

iii. **Right of First Offer for an Operations and Maintenance Contract**. A Right of First Offer clause (also known as a "ROFO" or "First Right of Offer") gives Seller the first opportunity to negotiate before the owner can offer it to others. Therefore, if Purchaser intends to hire a company to manage the operations, maintenance, and asset management (the "O&M Contract") of the Project after the sale, Purchaser herby grants the Seller the first right to make an offer for the O&M Contract, before the Purchaser offers the contract to any third party.

(1) Intent to Bid. Purchaser shall provide written notice (the "Notice") to Seller that it intends to seek an O&M Contract for the Project. The Notice shall include the terms and conditions of the proposed contract, including the scope of work and any other relevant details (the "Offer Terms").

(2) Procedure. Upon receipt of the Notice, Seller shall have (30) days to respond with a proposed O&M Contract, based on the terms outlined in the Notice or on terms mutually agreed upon by the parties. If Seller does not respond within the (30) day period, Purchaser is free to offer the contract to any third party on terms that are not more favorable than those offered to Seller.

(3) Failure to Reach Agreement. If in the event that Seller does not accept the Offer Terms, or if the parties fail to reach a mutually acceptable agreement within (30) days after the Notice, Purchaser shall have the right to offer the O&M Contract to a third party, provided that the terms to such third party are not more favorable than those offered to Seller under the Right of First Offer.

(4) Expiration of ROFO. The First Right of Offer granted herein shall terminate upon the earlier of: (a) Seller's written waiver of the ROFO; or (b) (15) years from the date of this Agreement.

(5) No Obligation. Nothing in this clause shall obligate Purchaser to hire the Seller, and Purchaser reserves the right, at its sole discretion, to reject any offer made by Seller. Purchaser may also provide their own O&M internally, and choose not to go to bid. As such, the Purchaser has no obligation to the Seller if they do not plan to go to bid for the O&M Contract.

(6) Confidentiality. The existence and terms of this ROFO shall be confidential and may not be disclosed to any third party without the prior written consent of both parties, except as required by law.

15. Indemnification and Limitations of Liability.

a. General. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 15(b) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).

b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. Environmental Indemnification.

i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(iv)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

ii. Purchaser Indemnity. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any

Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability**.

i. No Consequential Damages. Except with respect to indemnification of third-party claims pursuant to Section 16, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(d)(i)

ii. Actual Damages. Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 15(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

e. **EXCLUSIVE REMEDIES**. TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

f. **Comparative Negligence**. Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

16. Change in Law.

a. **Impacts of Change in Law**. If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

b. **Illegality or Impossibility**. If a Change in Law renders this Agreement or Seller's performance of this Agreement illegal or impossible, Seller may terminate Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement, except with respect to liabilities accrued prior to date of termination.

c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

17. Assignment and Financing.

a. **Assignment**.

i. Restrictions on Assignment. Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System.

ii. Permitted Assignments. Notwithstanding Section 17(a)(i):

(1) Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)),

(B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and

(2) Purchaser may, by providing prior notice to Seller, assign this Agreement:

a. to an affiliate of Purchaser or a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness; and

b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

b. **Financing**. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

c. **Termination Requires Consent**. Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

18. **Confidentiality**.

a. **Confidential Information**. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

b. **Permitted Disclosures**. Notwithstanding Section 18(a):

i. Each Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information**.**

ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

c. **Miscellaneous**. All Confidential Information remains the property of the disclosing Party and will be returned to the

disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

d. **Goodwill and Publicity**. Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

19. General Provisions

a. **Definitions and Interpretation**. Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "$" sign refer to United States dollars.

b. **Choice of Law; Dispute Resolution**. The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in **Spokane County**. The arbitration shall be administered by **Spokane County Superior Court** in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.

c. **Notices**. All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.

d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.

e. **Further Assurances**. Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.

f. **Waivers**. No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

g. **Non-Dedication of Facilities**. Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to

restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.

h. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

i. **No Partnership**. No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.

j. **Entire Agreement, Modification, Invalidity, Captions**. This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.

k. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

l. **No Third-Party Beneficiaries**. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.

m. **Counterparts**. This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

- End of Exhibit 3 -